McCain-Feingold, we will be hurting the democratic process.

This is a time when all of us, Democrats and Republicans alike, must do what is right for our country, what is right for our democracy.

The Biblical account of Joshua and the battle of Jericho shows us the strength of a united voice. We are told that ''the people shouted with a great shout, so that the walls fell down.''

If we speak with one voice, the wall of ''soft money'' that separates ordinary citizens from their government will come down. Only then can we be confident that campaigns are decided by the power of our ideas, not by the power of our pocketbooks.

I enthusiastically support campaign finance reform and hope that we can pass legislation that reduces the influence of money in politics.

WOMEN'S HISTORY MONTH AND JACKIE STILES

Mrs. CARNAHAN. Madam President, this month we celebrate Women's History Month. It is an opportunity to reflect on the successes, advances and contributions women have made and are making in American life.

Today, I have the special privilege of honoring a woman who is not only celebrating women's history this month—she is making it.

Jackie Stiles stands 5 feet 8 inches tall, but she is a giant on and off the court. Earlier this week, she led the Lady Bears of Southwest Missouri State into victory over Washington, securing her team a spot in the NCAA Final Four. It was the latest accomplishment in the life of this remarkable young woman.

In high school, she was a 14-time state track champion and once scored 71 points in a single basketball game. Her fans would show up at nine in the morning with lounge chairs to be first in line when the gym doors opened at 4:30. They just wanted to catch a glimpse of Jackie in action. She is a hero in her home town—and in towns across America where young girls dream impossible dreams. Jackie shows them dreams can happen.

At Southwest Missouri State, Jackie Stiles has scored—as of today—3,361 points, becoming the all-time leading scorer in the NCAA. She has also become the heart of the Lady Bears. Every time she plays, she thrills the sell out crowds at the Hammons Student Center—better known as the ''House of Stiles.''

On Friday, the team will come home to Missouri for the Final Four. And with all due respect to my colleagues from the great state of Indiana, I predict a big win over Purdue for Jackie Stiles and the Lady Bears.

Jackie Stiles didn't become a star overnight. She does it the hard way—the only way she knows how. She began training at age two with her father and has pushed herself ever since. She goes to the gym and won't leave until she makes 1,000 shots.

The story of Jackie Stiles is also the story of Title IX, the landmark civil rights legislation which set out to curtail discrimination against women and girls in education and athletics. Without Title IX, we might never have heard of heroes like Jackie Stiles. In 1971, the year before Title IX, only 25,000 women competed in college sports. Today, that figure has grown to more than 135,000 women—including one very talented player who wears the number ten jersey for Southwest Missouri State.

Jackie's success is measured in more than just rebounds, lay-ups, and jump shots. She has brought attention to women's sports, and has proven that women's basketball is exciting. Most of all, she is a role model and an inspiration for thousands of girls.

If she chooses, Jackie's next stop is probably the WNBA. I have no doubt that she will become one of the league's greatest attractions. She will help not only her team but her sport and all those who appreciate and enjoy it.

Mr. President, in honor of Women's History Month, I'd like to offer my congratulations to Jackie Stiles, the Lady Bears of Southwest Missouri State, and all the other heroes who are bringing women's sports to a new high and teaching young girls to follow their dreams. May they continue to thrill, entertain, and inspire us.

EXTENSION OF MORNING BUSINESS

Mr. REID. Madam President, with the consent of my friend from Kentucky, I ask unanimous consent we extend the morning hour until 2:30, and leave thereafter half an hour to be divided among the opponents and proponents of the two pending amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

HARD MONEY

Mr. WELLSTONE. Madam President, I will take a little bit of time because I think other Senators will be coming out to the floor soon to talk about where we are on the hard money changes. We had a proposal by Senator THOMPSON which basically raised the amount of money that an individual could give to a candidate from $1,000 to $2,500 per election; from $2,000 to $5,000 over a 2-year cycle; so $2,500 per election, primary, general, up to $5,000 per candidate. There are other provisions as a part of the Thompson amendment.

The other one I want to mention is raising the aggregate limit from $30,000 to $50,000, which actually per cycle means $100,000.

So what we are saying now is an individual can give up to $5,000 supporting a candidate, and in the aggregate, an individual, one individual could give as much as $100,000 to candidates.

I have recited the statistics on the floor so many times that I am boring myself. But there is the most huge disconnect between the way in which—here on the floor of the Senate and in the ante room—the way that people who come together in the lobbying coalitions are defining compromise and victory, and the way people in coffee shops think about this. One-quarter of 1 percent of the population contributes $200 or more, one-ninth of 1 percent of the population contributes $1,000 or more.

So I do not really see the benefit of injecting yet more money into politics, literally turning some of the hard money into soft money. I am sure people in the country are bewildered by hard money, soft money. Let me put it this way. I don't see how politics that becomes more dependent on big contributors, heavy hitters, people who have more money and can afford to make these contributions, is better politics. I just don't get it.

On the Thompson amendment, there was a motion to table. It was defeated. I thought, frankly, some of the moderates on the Republican side who were part of the reform camp would have voted against the Thompson amendment. They did not. Senator FEINSTEIN came out with an amendment, and her amendment basically doubles the limits. So I guess we go from $1,000 to $2,000 and then $2,000 to $4,000 and it raises the aggregate amount but not a lot.

The Feinstein amendment is certainly better than the Thompson amendment. Now there are some negotiations. Regardless of what happens in these negotiations, the point is the headlines in the newspapers in the country tomorrow for the lead story should be ''U.S. Senate Votes for Reform, Votes to Put More Big Money Into Politics,'' because that is really what we are doing. I think this is a huge mistake. I have two children who teach.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

CAMPAIGN REFORM ACT OF 2001—Continued

Mr. WELLSTONE. Madam President, I ask unanimous consent that I be allowed to keep the floor as we move on to the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Madam Chair, I have two children who are teachers. I

can tell you right now that neither one of them can afford to make a $1,000 contribution or a $2,000 contribution or $4,000 or $5,000 in an election cycle. I can tell you right now that neither one of them can afford to make $30,000 worth of contributions. My God, that is, frankly, the salary of a good many teachers in this country. They cannot afford to make those kinds of contributions.

On the floor of the Senate we are saying, my gosh, the reality is that we have this inflation and $1,000 isn't worth $1,000. The reality is that the vast majority of the people in the country don't make these big contributions; therefore, we don't pay as much attention to them; therefore, they have become increasingly disillusioned, and now as a part of this deal we are raising the spending limits—whatever the compromise is. It seems to me that it goes exactly in the opposite direction than we should be going.

How are ordinary citizens who can't afford to make these big contributions going to feel—that this political process is now going to be better for them when we have taken the caps off and have raised the contribution level? Now people who are running for office are going to be even more dependent on the top 1 percent of the population. How is that reform?

I haven't done the analysis. I do not know how it will add up. My guess is that while, on the one hand we are taking the soft money out, we are now going to be putting a whole lot more hard money into politics. In the election year 2000, 80 percent of the money in politics was hard money.

I am not trying to denigrate taking soft money out—the prohibition on soft money that is in McCain-Feingold. But as this legislation moves along, I am, in particular, saddened and a little bit indignant that we are now defining ''reform'' to raise the limits so those people who can afford to make a $1,000 contribution can now make $2,000; those who can afford over 6 months—whatever cycle—to make not $2,000 but to now make $4,000 contributions will be able to do so.

The argument that some of my colleagues make is the fact that 99 percent of the population can't afford to do this doesn't mean we shouldn't let the other 1 percent.

But I tell you what is going to happen. We are going to be even more dependent on the big givers. We are going to become even more divorced from all of those people who we serve who can't afford to make those contributions. We are going to spend even less time. There will be even less of an emphasis on the small fund raisers and less of an emphasis on grassroots politics. It is a tragedy that we are doing this.

I do not know how the bill will ultimately go. I think this is a terrible mistake. It has that sort of ''made for Congress'' look.

This is the sort of agreement that is a victory, Minnesotans. This victory is for all you Minnesotans who now contribute $1,000 or more. You will be able to give even more money to candidates. Minnesotans, please listen. The Senate is now pretty soon about to pass a reform measure. All of you Minnesotans who contribute $1,000 and $2,000 a year and can afford to do it will now be able to double your contributions. I am sure people in Minnesota will just feel great about this. I am sure people in Minnesota will feel that this is real reform. And I am sure 99 percent of the people in Minnesota will feel it is true.

This is a game we can't play: You pay, you play. You don't pay, you don't play.

I will finish, maybe, but just to make one other point.

I am looking at this in too personal of a way by showing more indignation than I should. People can disagree. That is the way it is. You win or lose votes.

We talk about getting rid of soft money. With what we are now about to do on these individual spending limits, there is a bunch of people who will never be able to run for this Senate. They are really not. I will tell you who those people are. They are women and men who themselves don't have a lot of money and who take positions that go against a lot of the money interests in this country and people who have the economic resources.

I said earlier that the Chair would be interested in this because of her own history. I was talking about the Fannie Lou Hamer Project. Spencer Overton from the Fannie Lou Hamer Project was speaking yesterday at the press conference. Fannie Lou Hamer, as the Chair knows, was this great civil rights leader, daughter of a sharecropper family, large family, grew up poor, and became the leader of the Mississippi Democratic Party. She was a great leader, a poor person, a poor woman, and a great African-American leader.

He was saying yesterday that there are not any Senators who look like Fannie Lou Hamer. He was right. He went on to say that the truth is, this isn't an issue of corruption. This is an issue of representation—of whether there is inclusion or exclusion. The Fannie Lou Hamers of this country are going to be even less well represented when we become even more dependent on those fat cats who can make these huge contributions.

How is a woman such as Fannie Lou Hamer, a great woman, ever going to run? How about people who want to represent the Fannie Lou Hamers? How are they going to have a chance to run? They are going to be clobbered.

Democrats, don't get angry at me, but there are plenty of Democrats who will be able to raise the money. That is good. You will be able to get the two, or three, or four, or five, or six. I don't know what their final deal will be. You will be able to get those big contributions. But you will pay a price. Democrats, we will pay a price. We are paying that price. We will dilute our policy performance. We will trim down what we stand for. We will be more reluctant to take controversial positions on test economic issues. We will be less willing to challenge economic and political power in America today than we are already, and today we are not so willing to challenge that power.

This isn't just like statistics. And here is one proposal to raise the money, and here is another one, and now we have a compromise. This is about representation.

Spencer was right. Spencer Overton was right. Fannie Lou Hamers are not going to be well represented at all. I doubt whether hardly anybody who comes from those economic circumstances today and who take positions that are antithetical to economic and political power in America—I hate to argue conspiracy. I am just talking about the realities. Are they ever going to be able to run? I don't think they will be able to run. It is going to be very hard. If you are well known or an incumbent, you have a pretty good chance. That is good.

We get some great people here. We have the Presiding Officer. We have Senator KENNEDY. Senator DAYTON is here—people who have been well known for good reasons and who have accomplished a lot in their lives. The Chair has. People who have economic resources—Senator KENNEDY does, and Senator DAYTON does—care deeply about these issues. That is not my point.

My point is that as we rely more and more on the big contributors and the well oiled and the well heeled and the heavy hitters, all of us who are running are going to become more dependent on that money. The people who are going to have the most difficult time ever getting elected are going to be ordinary citizens, which I think means they are the best citizens. I mean that not in a pejorative way but in a positive way. They are not going to have a prayer. They are not going to have access to this money.

Let's not kid ourselves. If you believe the standard of a representative democracy is that each person should count as one, and no more than one, we have moved dangerously far away from that. I do not see how any kind of ''compromise,'' defined by the pattern of power right here in the Senate today, represents a step forward, where we now are going to say that those people who are the big givers are going to be able to give more and those people running for office are going to be more dependent on them.

I bet you, Madam Chair, that after this amendment or this compromise passes, that over 50 percent of the money that will be raised in the next election cycle—the cycle I am in—over 50 percent of the money that will be raised will be in these large contributions, raised from, again, about 1 percent of the population.

Now I ask you, how does that represent reform? How does that make

this a healthier representative democracy? I think it is a huge mistake. And, I, for one, am adamantly opposed and want to express my opposition.

I am not out on the floor to launch a filibuster, so I will yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, we expect the group that has been working on a compromise on the hard money contribution limit to come back to the floor at some point in the next hour or so. Rather than sit around and churn, it is agreeable to both sides for Senator DEWINE, who will have the next amendment after we finish the disposition of the Thompson and Feinstein matter, to go on and lay his amendment down, which he can set aside when those involved in the discussions come back to the floor. He can lay down his amendment and begin the discussion. I believe that is all right with the Senator from Connecticut.

Mr. DODD. Yes. What I suggest is that this requires unanimous consent as we go along.

I ask unanimous consent that the Senator from Ohio be recognized for a half hour for the purpose of offering his amendment and speaking on his amendment, and that at the hour of 3:30, the Senate would revert to a quorum call.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Ohio is recognized until the hour of 3:30.

AMENDMENT NO. 152

Mr. DEWINE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself, Mr. HATCH, Mr. HUTCHINSON, Mr. BROWNBACK, and Mr. ROBERTS, proposes an amendment numbered 152.

(Purpose: To strike title II, including section 204 of such title, as added by the amendment proposed by Mr. Wellstone (Amendment No. 145)

Beginning on page 12, strike line 14 and all that follows through page 31, line 8.

Mr. DEWINE. Mr. President, this is a very simple amendment, which I will explain in just a moment. I offer it on behalf of myself, Senator HATCH, Senator HUTCHINSON from Arkansas, Senator BROWNBACK, and Senator ROBERTS.

Our amendment is very simple. It is a motion to strike title II, the Wellstone-Snowe-Jeffords provision from the underlying McCain-Feingold bill.

Mr. President, this amendment is necessary because title II draws an arbitrary and capricious and unconstitutional line—a line that abridges the first amendment rights of U.S. citizens. Under title II, citizens groups—and I emphasize that this is currently in the bill and unless our amendment is adopted, it will stay in the bill—American citizens would be prohibited from discussing on television or radio a candidate's voting records and positions within 60 days before a general election or 30 days before a primary.

That is right, Mr. President, and Members of the Senate. It would be illegal for citizens of this country, at the most crucial time, when free speech matters the most, when political speech matters the most—that is, right before an election—this Congress would be saying, and the ''thought police'' would be saying, the ''political speech police'' would be saying that you cannot mention a candidate's name; you cannot criticize that candidate by name.

It silences the voices of the people. It silences them at a time when it is most important for those voices to be heard. It restricts citizens' ability to use the broadcast media to hold incumbents accountable for their voting records. It says essentially that the only people who have a right to the most effective form of political speech, the only people allowed to use television or radio to freely express an opinion or to take a stand on an issue when it counts, when it is within days of an election, are the candidates themselves and the news media. But under the way the bill is written now, not the people—just candidates and the news media. Everyone else would be silenced by this unconstitutional, arbitrary line.

Let's suppose for a minute that title II stays in the bill and it becomes law. Under this scenario, if you are a candidate running for Federal office and it is 60 days before the election, yes, you can go on the radio or the local television station and broadcast your message. If you are lucky enough to be Dan Rather, Tom Brokaw, or Peter Jennings, or the person who anchors the 6 o'clock news or 7 o'clock news in Dayton, OH; or in Steubenville, OH; or in Cleveland, you can also talk about the issues and candidates, and you can talk about them together. You can talk about the candidate's voting record.

But if you don't fall into either one of these two categories—if you are part of a citizens group wanting to enter the political debate and engage in meaningful discourse, using the most wide-sweeping medium for reaching the people which is TV, under this provision you cannot do that. You simply cannot enter the debate using television or radio as a mode of communication.

Title II of this bill makes that illegal. So if you would go in to buy an ad and say you want to criticize where the ad mentions the name of a candidate who is up for election within that 60-day period, the local broadcaster would have to turn to you and say, no, he cannot accept that. It is illegal because the U.S. Congress has said it is illegal.

Title II would make it illegal for citizens groups to take to the airwaves and even mention a political candidate by name. It would make it illegal to state something as simple as to tell the voters whether or not a candidate voted yes or no on an issue. It basically just throws the rights of citizens groups out of the political ring. It throws them right out of the ring. I believe that is wrong and I think it is also unconstitutional.

It represents a direct violation of the people's right to free political speech, the right guaranteed to us by the first amendment of the Bill of Rights in the Constitution of the United States of America.

The language in this bill picks the time when political speech is the most important and restricts who can use that political speech, and who can engage in that political speech.

Let me tell you an example from the real world. It is an example that could have involved me. I have been a proponent for something in Ohio we refer to as the Darby Refuge. It would be a wildlife refuge in central Ohio. I won't trouble or bother Members of the Senate now with the reasons why I have been a strong advocate for this, but I have been. I think it is the right thing to do.

There are also citizens in the State of Ohio who live in that area of the State who don't think it is such a good idea. They have exercised their first amendment rights time after time to explain to me and to other citizens in Ohio who are driving down the highway that it is not such a good idea, and that this proposed wildlife refuge is not the thing to do. We have seen signs up—and I think they are still up—which say ''No Darby, Dump DeWine.'' We have seen signs that say ''Get Mike DeWine Out of my Backyard.'' That was on a T-shirt. Other signs have been around also.

Obviously, I didn't particularly like the fact that these signs were there.

What was my response to people when they said, What about those signs? I tried to explain why I was for the Darby, but I also said: The first amendment is there; it is alive and well, and people are exercising their constitutional rights.

Let us suppose this citizens group—actually there are two formal citizens groups that oppose the Darby and have been very vocal about it. Let us suppose that within 60 days prior to the last November election—I was up for reelection last November —let us suppose they had put some money together, and let us suppose they went to the Columbus TV stations and the Dayton TV stations. Let us also suppose this title II was law.

Let us suppose they took their money and went to buy an ad, and what they wanted to talk about in that ad was why the refuge was a bad idea. Let us suppose also they wanted to convey another message, and that message was: Call Senator MIKE DEWINE

and tell him he is wrong. Call Senator MIKE DEWINE and tell him that you oppose the refuge and you think he should as well.

I would not have liked that. It probably would have irritated me. But they have a constitutional right to do that if they want to do it.

Under the bill as now written, they could not do that. The TV station in Dayton or the TV station in Columbus would have had to turn to them and say: Oh, no, you cannot say that; there are only certain things you can say. You can talk about the refuge being a bad idea, but you cannot mention MIKE DEWINE'S name.

That is when it would become apparent to these citizens that their first amendment rights were being abridged, and the person who ran the TV station, the general manager, would have had to tell them: Congress said you cannot run this type of ad. I submit that is wrong.

As much as those of us who have been in public office and who have faced tough elections do not like criticism, as much as sometimes we think political ads that attack us are unfair, as much as we sometimes think they distort, as much as sometimes we think they only tell half the story, that is just part of the political process. That is what the first amendment is all about.

The fact is that today in a State such as Ohio, my home State, if you want to reach the people of the State, there is really only one way to effectively do it, and that is the use of television. You have to be on the air, and you have to get your message across. That is true whether you are running for office and you are the candidate or whether you are a group of citizens who decide they want to convey a message, they feel strongly about an issue and want to link that issue with a person who is running for office. Today they can do that. The way the bill is now written, they cannot.

The fact is, given today's national political discourse in the modern age of technology, television and radio play the primary, if not the key, role in the spreading of political messages. The whole reason we use the names of candidates in political speech on television is to emphasize policy positions and alternative policy options. Doing so enables people to evaluate and support or criticize incumbents' voting records and their positions on issues. That is the basis, the very essence, of political speech and debate.

Messages about the candidates, about their voting records and their positions on the issues, speak louder and have a greater impact on voters than just generic issue ads about Social Security or about Medicare, tax cuts, or whatever is the issue of the day.

Constitutionally, we cannot deny citizens groups access to the most effective means of reaching the largest number of people for the least amount of money, and that is TV and radio. We cannot deny them the ability to communicate through television and radio during the time period most vital to deciding the outcome of an election, the time when they can have the most impact. We should not deny them a voice in the political debate, but, unfortunately, title II effectively does just that.

Ultimately, political speech is directly tied to electoral speech. We cannot escape that. We cannot escape, nor should we try to escape, the fact that our Constitution protects the rights of people to support or to criticize their Government or the people running for Federal office. The founders of this country recognized that. They knew from their own personal experience in forming this Nation that political speech is of the highest value, particularly during the election season, and it must be protected.

Given that, the last thing we should be doing is restricting 60 days before an election the people's right to get the word out to voters about the issues and about the candidates. Such a restriction is absurd. Such a restriction is wrong. Such a restriction is blatantly, certifiably unconstitutional.

I realize that criticism, very often part of political speech, makes incumbents uncomfortable. It makes us all uncomfortable. I know this. I have been there. Do I like to be criticized? No. Does anyone like to be criticized? No. Do we like to see our voting record picked apart? No.

The fact remains that no matter how much those in public office do not like to hear negative political speech, our Constitution protects that very speech. Federally elected officials are here to serve the people, and the people deserve the right to cheer us or to chastise us, particularly during an election campaign.

Are we, as Members of this body, becoming the political speech police? Are we becoming the guardians of incumbent protection? Are we so worried about tough criticism from outside groups, American citizens? Are we so concerned about what we consider to be unfairness and the potentially misleading nature of their message that we are willing to curtail their basic, constitutional, first amendment rights?

I hope not, and I hope we adopt this amendment and pull back from this infringement on people's constitutional rights. We all should be offended by the attempt to do that.

The fact is that the limits imposed by title II on political speech, limits on legitimate political discourse, debate, and discussion will hurt voters. The voters will have less opportunity to make informed choices in elections. It is the voters and the public who ultimately will lose.

Allow me to read directly from the Bill of Rights—and we are all familiar with it—amendment I:

> Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

I repeat, ''Congress shall make no law . . . abridging the freedom of speech. . . .''

These are very simple words, but they are some of the most powerful and certainly most important words in the Bill of Rights and in our Constitution.

I am certain that my colleagues in the Senate all realize our Founding Fathers, when crafting our Bill of Rights and our first amendment protections, had political speech—political speech specifically—in mind. They knew how important and vital and necessary free speech is to our political process and to the preservation of our democracy. They knew that democracy is stifled by muzzles and gags. They knew that free speech was necessary for our political system—our open, free political system—to function and, yes, to flourish. They knew that liberty without free speech is really not liberty at all.

We all understand that none of our rights is absolute. In fact, there are constitutionally acceptable limits on political speech. For example, the Supreme Court has ruled that the government has an interest in regulating political speech when there is a clear and present danger that the speech will result in the imminent likelihood of violence. Also, the Court has said that defamation laws apply to political candidates, so as to protect them from statements that are knowingly false. In such situations, the government has a compelling interest in restricting the speech. I ask my colleagues: What is the government's overriding and compelling interest in restricting core political speech 60 days or less from an election—at the time most crucial to the public's interest in hearing and learning about candidates and their positions and incumbents and their voting records? How will restricting the most important speech at the most important time further our election process and political system? It clearly will not.

The bottom line, Mr. President, is that core political speech is different from other forms of speech. It lies at the heart of the first amendment and deserves the highest—the utmost—level of protection. To that extent, I agree with Justice Thomas who said that political speech is the very speech that our founding fathers had in mind when actually drafting our Bill of Rights and our first amendment protection. Justice Thomas further argued that the key time for political speech is during campaigns. He wrote:

> The Founders sought to protect the rights of individuals to engage in political speech because a self-governing people depend upon the free exchange of political information. And that free exchange should receive the most protection when it matters the most—during campaigns for electrive office.

The Supreme Court, in Buckley v. Valeo, emphasized the importance of

protecting political speech. The Court wrote:

> The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution, it is not the government, but the people—individually, as citizens and candidates, and collectively, as associations and political committees—who must retain control over the quality and range of debate on public issues in a political campaign.

The Court was telling Congress, essentially, to stay out. It was saying don't diminish the first amendment rights of citizens and organizations to participate in political debate. Don't restrict the means by which the people of this nation make informed decisions about candidates running for federal office.

The fact is, Mr. President, in order to embrace the freedoms guaranteed by the first amendment, we must allow others to exercise those freedoms. Title II runs counter to that, and in the process, violates our Constitution.

Title II hugely undercuts the McCain-Feingold campaign finance reform bill. It has turned the campaign finance debate on its head. It has turned the debate into a clear struggle over the soul of the first amendment, and ultimately, the preservation of our democracy.

If we are to protect and preserve our democracy, we must allow the people to be heard. Voters cannot make informed decisions about candidates when political speech—when ideas and information about candidates—is restricted at the most pressing time. As voters, we make better decisions when there are more voices, more information, and more ideas on the table. Ideas competing with one another. That is the essence of democracy.

That is the basis for political debate and challenges to public policy.

That is the basis for how we make changes in our society—for how we make the world a better place. With all of the complexities of today's election laws and competing campaign finance reform plans, I think that Ralph Winter, the respected judge and former law professor, said it best when he noted that the greatest election reform ever conceived was the first amendment. He was right. Unfortunately, title II strikes at the first amendment by restricting the dissemination of information to voters and the open exchange of ideas that we so much treasure.

The exchange of those ideas, Mr. President—through core political speech, whether it's two years, two months, two weeks, or two days before an election—is a prerequisite for democratic governance. That is the basis of our Constitution. We in Congress have an obligation to protect that Constitution—to protect our first amendment and the free flow of ideas. That, after all, is the spirit—the essence—the foundation of our democracy.

What all of this means is simply this: If you are a citizens group, you are an American citizen, and you don't like what I am saying today or what this amendment does, or what my vote will be on final passage of this bill, under this bill, as currently written, you could not talk about any of this if it were right before a Federal election. You could not use the airways and the TV and radio to criticize me or to talk about this vote and to talk about this amendment. If we accept this, it will silence a citizen's ability to tell the public about our voting records.

What this language says is that we are afraid to let people tell the outside world what we do in the Senate. We can't do that. Rather, I believe we must protect the rights of the people. We must preserve our Constitution. We must not let that great Constitution, that great Bill of Rights, that first amendment be chipped away by efforts clearly aimed at protecting the self-interests of the incumbent political candidates. To do any less, as we change this, as we amend it, to do any less would fly in the face of our democracy and the American people whom we are here to serve.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I ask unanimous consent I may proceed as in morning business for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 638 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I now suggest a period of, say, 15 minutes for general discussion on an agreement that has been reached between Senator THOMPSON and Senator FEINSTEIN. On the purpose of that discussion, why don't I yield to Senator THOMPSON of Tennessee to begin the discussion and then Senator FEINSTEIN as time permits, as far as this agreement, or others who may want to talk about it. My hope would then be we would have legislative language which would include this compromise which we would be able to offer as a modification of the Thompson amendment, and a vote to occur thereon shortly after the debate is concluded.

The PRESIDING OFFICER. Does the Senator have a unanimous consent request?

Mr. DODD. No. We are just going to proceed in this regard.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I think the Senator from Connecticut is correct. Senator FEINSTEIN and others and I have been meeting, talking about how we might come together for a unified modification of my amendment. As this body knows, my amendment was not tabled. Senator FEINSTEIN's amendment was not tabled. That was the basis for our discussion.

We acknowledge readily that it was certainly appropriate to increase the hard money limits in certain important categories.

We had a full discussion of those categories of concerns and desires on either side.

Pending the language and subject to comments of my distinguished colleague from California, I would like to basically outline the highlights of the crucial elements of this modification.

The individual limitation to candidates, which now stands at $1,000, will be increased to $2,000 and indexed. The PAC limitation of $5,000 under current law stays at $5,000. The State local party committees, which is now $5,000 a calendar year under current law, will go to $10,000 per year. The contribution to national parties, which under current law is limited to $20,000 a year, will go to $25,000 a year and be indexed at the base.

The aggregate limit, which is now $25,000 per calendar year under current law, will go to $37,500 a year and be similarly indexed.

We will double the amount that national party committees can give to candidates from $17,500 to $35,000 and be similarly indexed.

A part of our agreement also has to do with the amendment originally from Senator SCHUMER, that was later incorporated into the Feinstein amendment, having to do with the 441 situation he described pending the Supreme Court decision in the Colorado case; that we expect a part of our agreement with regard to this modification is that it will not be a part of this Thompson-Feinstein modification but will get a vote separately shortly after the vote on this.

I believe that basically outlines the major provisions of the agreement.

I relinquish the floor and ask my distinguished colleague from California to make any statement she cares to.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Thank you very much, Mr. President. I thank the Senator from Tennessee, the Senator from Wisconsin, the Senator from Arizona, the Senator from Connecticut, the senior Senator from Mississippi, as well as

the senior Senator from New York—all who participated in this negotiation.

Essentially the question was around whether we could bring enough people together to settle what is a question that has become a major problem; that is, how do we account for inflation in hard money because it is likely we will not address this issue for another 20 or 30 or 40 years. Therefore, this is a bill that has to stand the test of time.

Many of us are deeply concerned that once you restrict soft money in campaigns and in parties, you create an opportunity for this soft money to go into the issue of advocacy of independent campaigns. It is undisclosed. It is unregulated. So what we want to try to avoid as much as we can is a transfer of millions of dollars of soft money from campaigns into millions of dollars of soft money into independent campaigns.

The way we do this is by trying to find a modest vehicle by which we can come together and agree on how much an individual contribution limit should be raised. I am very pleased to say that contribution limit in the bipartisan agreement is $2,000. That $2,000 would be indexed, as will the other indexes I will speak about in a moment, for inflation from a baseline that is provided for in the statute.

We came to agreement on the PACs—that PACs should remain the same; they should not be increased in amounts; they should remain at $5,000 a calendar year.

We came to agreement on continuing State and local parties at the same amount as McCain-Feingold—$10,000. That was clear in the Thompson amendment, the Feinstein amendment, as well as the McCain-Feingold bill.

Also, where we had the major discussion—I say a difference of viewpoint—was on the aggregate limit and the national party committees.

The people who were negotiating are people who wanted to see a bill. And it was very difficult because each of our proposals was at the outer limits of our own political party. So it was very difficult to find a way to move forward.

We did, however, in the Thompson amendment, which had $50,000 per calendar year for the aggregate limit, and it was agreed that we would drop that to $37,500 per year for the aggregate limit and that we would drop out of that the split I had proposed earlier in my statement.

With respect to national parties, that would go from $20,000—just by $5,000 a year—to $25,000.

Additionally, there are four things in this bill that are indexed. Again, the indexing is not compounded. It goes to the baseline in the statute for the candidate, for the national party per year amount, and for the aggregate amount.

Also, there is a provision in Thompson we agreed to which would double the amount that national parties can give to candidates from $17,500 to $35,000. That would be indexed on the same baseline formula as the other items.

In my view, and I hope in Senator THOMPSON's view, this gives us an opportunity to meet the future and to see that there is a modest increase. It is not a tripling of the individual limit. It is simply increasing it from $1,000 to $2,000 and then indexing it to inflation, but that there is a the basis now, we hope, where both sides can come together and vote for this bill.

I, for one, happen to think the indexing is healthy. I think it gives us an opportunity that we don't come back again, to reopen the bill, but that we live by the bill as it is finally adopted.

I really thank the Senator from Mississippi who began this fight with me. I thank the Senator from Tennessee for our ability to sit down together and have a turkey sandwich and also come to this agreement. I think it is a very important step forward for the bill.

I thank the Senators from Wisconsin and Arizona for their persistence in moving this bill along.

I yield the floor.

May I ask if the modification is available?

Mr. DODD. As my colleague spoke, an angel brought it. The modification has arrived.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT

Mr. MCCONNELL. Mr. President, under the provisions of the consent agreement, with the concurrence of Senator FEINSTEIN, myself, and Senator DODD, Senator THOMPSON will now send a modification to the desk.

In addition, I ask unanimous consent that the Feinstein amendment be withdrawn and there now be 30 minutes of debate equally divided in the usual form prior to the vote on the Thompson amendment, as modified, with no amendments in order to the amendment. I further ask consent that following the vote, the pending DeWine amendment be set aside, Senator SCHUMER be recognized to offer an amendment, and there be 60 minutes equally divided in the usual form. Finally, I ask consent that following the use or yielding back of the time, the Senate proceed to a vote on the Schumer amendment, with no amendments in order to the amendment.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The amendment (No. 151), as modified, was withdrawn.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, it is my intention to send a modification to the desk very shortly. It might take a couple moments.

Mr. DODD. To save a little time, if my colleague would yield, Mr. President, I have been looking at a couple drafting notes from legislative counsel. I have spoken on numerous occasions over the last several days of my concerns of raising the hard dollar limits that individuals may contribute on the theory that I do not think there is too little money in politics, on the contrary, I think there is too much money. We are shutting down the door of soft money. Fine, as it should be. However, my concern is that we are also banging open the back door with hard dollars amounts. To the average citizen in this country, there is no distinction between hard and soft money. We make the distinction for the reasons we are all aware of. What I believe is people are sort of disgusted with the volume and amount of money in politics. This agreement is one I am going to support. I do so reluctantly. However, I support the underlying McCain-Feingold bill. I think it is very important that we take steps forward to change the present campaign finance system. I regret we are adding to the hard dollar limits on contributions that individuals can make to candidates, national political parties, and overall aggregate annual limit.

I come from a small State. I represent a State of 3.5 million people. My colleague from California represents a State 10 times that size. I recognize that there are distinctions between these States. For example, campaigning is far more costly in California than it is in a State such as my own. I accept there needs to be some increase.

The modification Senator THOMPSON graciously worked out with Senator FEINSTEIN exceeds what I would do. It is certainly less than what was offered by our colleague from Nebraska, Senator HAGEL. It was less than what others wanted as well. It reduces substantially the aggregate amounts that were originally being offered at $75,000 per year or $150,000 a couple, down to $37,500 per calendar year. That still is too much, in my view, but it is a lot less than it otherwise could have been.

There are some other changes dealing with individual contributions to State and local party committees and the national parties. However, the PAC limits remained the same. We provided indexing for inflation. Again, this is something I have reservations about. I recognize that in any legislative body, if you are trying to put together a bill where 100 different people have something to say about it, and you have to produce 51 votes, then you are going to have to give up something if you are going to accomplish the overall goal.

My overall goal has been for years to get McCain-Feingold adopted into law. However, it was not a goal I was going to accept regardless of what was in the bill. Had we gone beyond these individual contribution limits we had

agreed to in these modifications, I would have had a very difficult time supporting the McCain-Feingold bill.

I will support McCain-Feingold. I urge my colleagues to do so. We have other amendments to address on both sides. The Members have ideas they want to add to this bill. In my view, this is a worthwhile effort. I commend my colleague from Tennessee—he is a noble warrior, a good fighter and debater, and a good negotiator—and our colleague from California who likewise has championed a good cause. I thank RUSS FEINGOLD and JOHN MCCAIN. I know this goes beyond even what they would like to do. We recognize we can't do everything exactly as we would like to do it. I believe this modification still is within the realm of the McCain-Feingold restrictions. For those reasons, I will support the bill.

AMENDMENT NO. 149, AS MODIFIED

The PRESIDING OFFICER (Mr. BROWNBACK). Under the previous order, the Senator from Tennessee has the floor to send the modification to the desk.

Mr. THOMPSON. Mr. President, the modification has been sent to the desk.

The PRESIDING OFFICER. Under the previous order and without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 37, after line 14, insert the following:

SEC. . MODIFICATION OF CONTRIBUTION LIMITS.

(a) INCREASE IN INDIVIDUAL LIMITS.—Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended—

(1) in subparagraph (A), by striking ''$1,000'' and inserting ''$2,000''; and

(2) in subparagraph (B), by striking ''$20,000'' and inserting ''$25,000''.

(b) INCREASE IN AGGREGATE INDIVIDUAL LIMIT.—Section 315(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(3)), as amended by section 102(b), is amended by striking ''$30,000'' and inserting ''$37,500''.

(c) INCREASE IN SENATORIAL CAMPAIGN COMMITTEE LIMIT.—Section 315(h) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(h)) is amended by striking ''$17,500'' and inserting ''$35,000''.

(d) INDEXING OF CONTRIBUTION LIMITS.—Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended—

(1) in paragraph (1)—

(A) by striking the second and third sentences;

(B) by inserting ''(A)'' before ''At the beginning''; and

(C) by adding at the end the following:

''(B) Except as provided in subparagraph (C), in any calendar year after 2002—

''(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

''(ii) each amount so increased shall remain in effect for the calendar year; and

''(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

''(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.''; and

(2) in paragraph (2)(B), by striking ''means the calendar year 1974'' and inserting ''means—

''(i) for purposes of subsections (b) and (d), calendar year 1974; and

''(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) calendar year 2001''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date of enactment of this Act.

Mr. THOMPSON. I yield 5 minutes to the Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I, too, commend the Senator from Tennessee. I would love to have gone further to really provide full indexation for the limits that were established in 1974, 26 years ago, and were thought to be appropriate at that time. But any increase in hard money limits is a step in the right direction.

To give you an idea of what the world without soft money is going to look like for our national parties, we took a look at the 2000 cycle, the cycle just completed, and made an assumption that the party committees would have had to operate in 100 percent hard dollars, which is the way they will have to operate 30 days after this bill becomes law. The Republican National Committee would have had 37 million net hard dollars to spend had we converted the last cycle to 100 percent hard dollars. Under the current system, they had 75 million net hard dollars to spend. So the Republican National Committee would go from 75 million net hard dollars that it had to spend last cycle down to $37 million.

The Democratic National Committee, in a 100-percent hard money world, last cycle, would have had 20 million net hard dollars to spend on candidates. In fact, it had $48 million under the current system. So the Democratic National Committee would go from 48 million net hard dollars down to 20 million net hard dollars, if you convert the last cycle into a 100-percent hard money world.

Finally, let me take a look at the two senatorial committees. The Republican Senatorial Committee last cycle under the current system had 14 million net hard dollars to spend on behalf of candidates. In a 100-percent hard money world, they would have had about 1.2 million net hard dollars to spend for candidates. Our colleagues on the other side of the aisle, the Democratic Senatorial Committee, in the current system had 6 million net hard dollars to spend on their candidates. In a 100-percent hard money world, they would have had 800,000 hard dollars to have spent on all of their 33 candidates.

The one thing that is not in debate, there is no discussion about it, this is going to create a remarkable, a huge shortage of dollars for the party committees. At least the Senator from Tennessee is trying, through negotiating an increase in the hard money limits for parties and providing indexation, to help compensate for some of this dramatic loss of funds that all of the party committees are going to experience 30 days after this bill becomes law.

I thank the Senator from Tennessee for the effort he made. I wish we could have done more. I hear there are plenty on the other side who wish we would have done less. This is at least a step in the right direction.

We are going to have a massive shortage of funds in all of the national party committees to help our candidates. It is going to be a real scramble. Hopefully, this will help a bit make up at least a fraction of what is going to be lost on both sides that will be available for candidate support.

I intend to support the amendment of the Senator from Tennessee.

Mr. THOMPSON. Mr. President, do I control the time?

The PRESIDING OFFICER. The Senator controls 11½ minutes.

Mr. THOMPSON. I ask the Senator from Arizona if he wishes to be heard at this time.

Mr. MCCAIN. One minute.

Mr. THOMPSON. I yield 1 minute to the Senator from Arizona.

Mr. MCCAIN. Mr. President, I want to take a minute to thank Senator FEINSTEIN and Senator THOMPSON. I have been privileged to see negotiations and discussions between people of good faith and a common purpose. I was privileged to observe that in the case of Senator THOMPSON and Senator FEINSTEIN. The Senator from Oklahoma, Mr. NICKLES, was very important, as was the Senator from Michigan, Mr. LEVIN, as well as Senator HAGEL of Nebraska and others, as well as the Senator from New York, Mr. SCHUMER. I know I am forgetting someone in this depiction.

I am proud that people compromised without betraying principle to come to a common ground so we can advance the cause of this effort. I express my deep and sincere appreciation to those Senators who made this happen, as well as our loyal staffs.

Mr. THOMPSON. Mr. President, I yield 2 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senators who took the lead in the negotiations, especially the Senator from Tennessee who, again, has had so much to do with this reform, and the Senator from California. They were extremely skilled at bringing us together. I thank Senator MCCAIN, Senator COCHRAN, who was part of the effort, Senator FEINSTEIN, Senators DODD, LEVIN, SCHUMER, of course, Senators REID and DASCHLE, Senators NICKLES and HAGEL, who were all involved.

I join in the remarks of the Senator from Connecticut. This particular

amendment doesn't move in the direction that fits my philosophy. I believe we should stay where the levels are, as do many of my Democratic colleagues. I very regretfully came to the conclusion that we had to do it. I realized if we are going to get at the No. 1 problem in our system today, the loophole that has swallowed the whole system, as Senator THOMPSON has said, we had to make this move.

I am grateful that we were able to keep the individual limit increase to a reasonable level. Although I would prefer that it not be indexed, I will note, at least we won't have to hear anymore that it isn't indexed for inflation because it is. So the next time Senators have to deal with this issue 20 years from now or 30 years from now, at least that very troubling and persistent argument will not be there.

I thank all my colleagues and look forward to the vote on the amendment.

Mr. THOMPSON. How much time is remaining?

The PRESIDING OFFICER. The Senator from Tennessee controls 8 minutes 45 seconds. The Senator from Connecticut controls 11 minutes 30 seconds.

Mr. DODD. Mr. President, I don't know of any other requests to speak. I think people are familiar with this issue. Does my colleague from California wish to be heard?

Mrs. FEINSTEIN. I think I have said what I needed to say. Maybe we can concede the rest of our time and have a vote.

Mr. DODD. I am prepared to yield back our time and go to a vote. We have other amendments on this side. There are several over there. We have to keep things going.

Mr. THOMPSON. I am prepared to yield back our time.

Mr. DODD. We yield back our time.

Mr. THOMPSON. Have the yeas and nays been ordered?

The PRESIDING OFFICER. Yes, the yeas and nays have been ordered.

Mr. THOMPSON. I suggest that we proceed to a vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee, Mr. THOMPSON, No. 149 as modified.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. BROWNBACK). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 84, nays 16, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—84

Akaka	Byrd	Craig
Allard	Campbell	Crapo
Allen	Cantwell	Daschle
Bayh	Carnahan	Dayton
Bennett	Carper	DeWine
Bingaman	Chafee	Dodd
Bond	Cleland	Domenici
Breaux	Clinton	Durbin
Brownback	Cochran	Edwards
Bunning	Collins	Ensign
Burns	Corzine	Enzi
Feingold	Kohl	Roberts
Feinstein	Kyl	Rockefeller
Fitzgerald	Landrieu	Santorum
Frist	Leahy	Schumer
Graham	Levin	Sessions
Gramm	Lieberman	Shelby
Grassley	Lincoln	Smith (NH)
Gregg	Lott	Smith (OR)
Hagel	Lugar	Snowe
Hatch	McCain	Specter
Helms	McConnell	Stevens
Hutchinson	Mikulski	Thomas
Hutchison	Murkowski	Thompson
Inhofe	Nelson (FL)	Thurmond
Inouye	Nelson (NE)	Torricelli
Jeffords	Nickles	Voinovich
Kennedy	Reid	Warner

NAYS—16

Baucus	Hollings	Sarbanes
Biden	Johnson	Stabenow
Boxer	Kerry	Wellstone
Conrad	Miller	Wyden
Dorgan	Murray	
Harkin	Reed	

The amendment (No. 149), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, again on the wings of angels, the Senator from New York has arrived.

The PRESIDING OFFICER. The Senator from New York is recognized to offer an amendment.

AMENDMENT NO. 135

Mr. SCHUMER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 135.

Mr. SCHUMER. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the sense of the Senate regarding the need for Congress to consider and enact legislation during the 1st session of the 107th Congress to study matters related to voting in and administering Federal elections and to provide resources to States and localities to improve their administration of elections)

On page 37, between lines 14 and 15, insert the following:

SEC. 305. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) the right to vote is fundamental under the United States Constitution;

(2) all Americans should be able to vote unimpeded by antiquated technology, administrative difficulties, or other undue barriers;

(3) States and localities have shown great interest in modernizing their voting and election systems, but require financial assistance from the Federal Government;

(4) more than one Standing Committee of the Senate is in the course of holding hearings on the subject of election reform; and

(5) election reform is not ready for consideration in the context of the current debate concerning campaign finance reform, but requires additional attention from committees before consideration by the full Senate.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate should schedule election reform legislation for floor debate not later than June 29, 2001.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. How much time do I have, Mr. President?

The PRESIDING OFFICER. Under the previous order, the two sides have 30 minutes each to debate the amendment.

Mr. SCHUMER. Mr. President, I am here to urge my colleagues to support an amendment that is of great importance to the future of McCain-Feingold and to the bill in general that we are debating, particularly in light of the fact we have just raised hard money limits. Let me explain to my colleagues what this is all about.

Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from New York.

Mr. SCHUMER. Mr. President, can I suspend for a minute? I believe they have read the wrong amendment at the desk.

I ask unanimous consent the previous amendment be withdrawn.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The amendment (No. 135) was withdrawn.

AMENDMENT NO. 153

Mr. SCHUMER. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 153.

Mr. SCHUMER. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To condition the availability of television media rates for national committees of political parties on the adherence of those committees to existing coordinated spending limits)

On page 37, between lines 14 and 15, insert the following:

SEC. ___. TELEVISION MEDIA RATES FOR NATIONAL PARTIES CONDITIONED ON ADHERENCE TO EXISTING COORDINATED SPENDING LIMITS.

(a) AVAILABILITY OF TELEVISION MEDIA RATES.—Section 315(b)(2) of the Communications Act of 1934 (47 U.S.C. 315(b)(2)), as amended by this Act, is amended—

(1) by striking ''TELEVISION.—The charges'' and inserting ''TELEVISION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the charges''; and

(2) by adding at the end the following:

''(B) LIMITATIONS ON AVAILABILITY FOR NATIONAL COMMITTEES OF POLITICAL PARTIES.—

''(i) RATE CONDITIONED ON VOLUNTARY ADHERENCE TO EXPENDITURE LIMITS.—If the limits on expenditures under section 315(d)(3) of the Federal Election Campaign Act of 1971 are held to be invalid by the Supreme Court of the United States, then no television broadcast station, or provider of cable or satellite television service, shall be required to charge a national committee of a political party the lowest charge of the station described in paragraph (1) after the date of the Supreme Court holding unless the national committee of a political party certifies to the Federal Election Commission that the committee, and each State committee of

that political party of each State in which the advertisement is televised, will adhere to the expenditure limits, for the calendar year in which the general election to which the expenditure relates occurs, that would apply under such section as in effect on January 1, 2001.

''(ii) RATE NOT AVAILABLE FOR INDEPENDENT EXPENDITURES.—If the limits on expenditures under section 315(d)(3) of the Federal Election Campaign Act of 1971 are held to be invalid by the Supreme Court of the United States, then no television broadcast station, or provider of cable or satellite television service, shall be required to charge a national or State committee of a political party the lowest charge of the station described in paragraph (1) with respect to any independent expenditure (as defined in section 301 of the Federal Election Campaign Act of 1971).''.

(b) FEDERAL ELECTION COMMISSION RULEMAKING.—Section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is amended by adding at the end the following:

''(4) If the limits on expenditures under paragraph (3) are held to be invalid by the Supreme Court of the United States, the Commission shall prescribe rules to ensure that each national committee of political party that submits a certification under section 315(b)(2)(B) of the Communications Act of 1934, and each State committee of that political party described in such section, complies with such certification.''.

(c) SEVERABILITY.—If this section is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendments to any person or circumstance, shall not be affected by the holding.

Mr. SCHUMER. Mr. President, this amendment is vital to the effectiveness of McCain-Feingold, particularly in light of the increase in hard money limits which we have passed by a large margin in the Thompson-Feinstein amendment. It is necessary because of an impending Court decision. The Supreme Court has already heard the case and is about to issue a decision related to the 441(a)(d) limits.

Let me first explain what the 441(a)(d) limits are, what the Court case is, what it does, and why it is so important. As we all know, there are 441(a)(d) limits, whereby a national party—in this case the Democratic Senatorial Campaign Committee or the National Republican Senatorial Committee—can contribute a certain amount of money directly to a candidate. There is complete coordination allowed between the party and the candidate by the recent Supreme Court decision. That amount of money is limited by the amount of voters in the State. It is 2 cents a voter, so it runs from a high of over $2 million in California, $1.8 million in my State of New York, down to a low in the State of Wyoming and places such as that, probably no more than a couple of hundred thousand dollars.

The case before the Supreme Court, which is called FEC v. Colorado Republican Federal Campaign Committee, has been argued. There it has been argued that those limits should be lifted, that there should be no limit as to the amount of money a national party organization can give to a candidate for the Senate or for the House.

What this would do, if the Court should rule favorably and uphold the lower court, is very simple. It would allow parties to go around and raise money in large, large amounts. After the Feinstein amendment that has passed, that would be $25,000 a year or $150,000 per 6-year Senate cycle. And then with complete coordination, the party could give that money to any particular candidate.

The consequences are obvious. The $1,000 or $2,000 limit that we now have would become much less important and large donors could contribute, through the national parties, obscenely large amounts of money to candidates. In effect, the Court decision would, if the 441(a)(d) limits were lifted, pull the rug out from under McCain-Feingold, all the more so because of the increase we have made in hard money limits.

You can call it hard, you can call it soft—it is large. The whole purpose of getting rid of soft money was not that it was soft, per se, but rather it was so large that it was unlimited. Imagine, after passing McCain-Feingold and having it signed into law—which I hope will happen—that the Supreme Court could make that ruling and then we basically go right back to the old days, where large contributions governed. That, in my judgment, would be a serious error on our part. That, in my judgment, would so undermine McCain-Feingold that we would have to be back here next year changing the law again.

I have heard colleague after colleague say we will not come back for 20 years. If the Court rules in favor of Colorado Republican Federal Campaign Committee, which most of those who have looked at the case believe they will, we will not be back here in 20 years; we may be back here in 20 months.

The amendment I have offered tries to ameliorate these conditions. In all candor, it does not eliminate them, but it does make them better. It does it very simply by saying, if a candidate should wish to go above the 441(a)(d) limit, the 2 cents per voter in his or her State, they cannot take advantage of the low-rate television time that is now offered in McCain-Feingold.

It is an incentive as many other incentives—to have candidates abide by limits. Again, could a candidate still violate those limits? Yes. They would just pay a lot more for their television advertising, which of course is the No. 1 expenditure in just about every hotly contested race.

Some have brought up the issue of constitutionality. Others have asked: Why are we legislating this at the time when we do not even know how the Court will rule? In answer to the second question, this amendment has no effect if the Court rules to keep the 441(a)(d) limits. No one can go over them and the mandatory limit will be held as constitutional. That is just fine. This amendment is designed to deal with the advent, the likely advent that the Supreme Court does rule. If we should fail to pass this amendment, which I know is subject to heated debate—the parties feel quite differently about this and I expect the vote will be very close, but if we should fail to pass it, I would say on the individual side, not on the corporate and labor side, 80 percent, 90 percent of McCain-Feingold will be undone.

It will allow a couple to give, through the party, $300,000 to a Senate candidate. It is true, of course, that the party cannot solicit them and say that we will, for sure, contractually almost, give the money to that candidate. But they can do virtually everything but. It would also allow a party to go to someone and say: Give us $100,000 over the next few years and we will give $25,000 to our four toughest races.

The whole idea of McCain-Feingold to stick to the $1,000 and the $2,000, or now the $2,000 and $4,000 limits, would be undone, again constitutionality, which seems to be the major argument against this.

In the amendment is the severability clause, and in that severability clause we say, of course, if this is thrown out, it will not affect the rest of the McCain-Feingold bill. Some say that is not necessary. But we put it in there just to deal with anyone who was not satisfied with the general language in the bill.

Second, on constitutionality, the courts have ruled repeatedly that voluntary limits may be placed on speech to further other goals.

The underlying case is Buckley v. Valeo which said that a government benefit can be conditioned on a candidate's voluntary agreement to forego other sources of funding. The $1,000 limit on Buckley v. Valeo is very simple. It has been in existence and upheld and would apply in this case.

Another case in 1979 where the Presidential limits were challenged is also applicable. It is called RNC, the Republican National Committee, versus the FEC. I believe it is a 1979 case before the Supreme Court. There again it was stated that in return for limits on campaign contributions—in this case, the Presidential limits, which every Presidential candidate until George Bush of this year abided by—the government could confer benefit, in this case money.

The only difference with what we are doing is instead of providing money to benefit, they are providing low television rates, which is in a sense money.

It is perfectly clear, and it has been repeated by the courts, that a voluntary limit on speech in exchange for another benefit that helps further that same goal is constitutional.

I know some have seen the Colorado case. If they bring it up, I will rebut it.

But I want to conclude before I yield my time by pleading with my colleagues to support this amendment. I salute all those of us who have worked on McCain-Feingold. I salute both the Senator from Arizona and the Senator

from Wisconsin for their leadership, the Senator from Kentucky, and the Senator from Connecticut for conducting this debate in a fair, admirable, and open fashion, and all the others who have worked on this issue.

Everyone sort of had a vested interest in seeing that this amendment passes. I would like to see it pass. But it would be a shame if we pass the amendment only to see it undone in large part 3 months from now. It would increase the cynicism of the public. It would increase for thousands of us who believe in reform the view that nothing could be done, and it would make it harder to continue reform. It would be close to a tragedy.

After all the work done by so many, if the 441(a)(d) limits were lifted and hard money could cascade into candidacies just the way soft money does now, we would be making a major mistake.

I urge my colleagues to support this amendment. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Mr. President, last week Senator SCHUMER stated that the Supreme Court's decision in FEC v. Colorado Republican Federal Campaign Committee could deluge the system with unlimited amounts of money raised in enormous amounts through the national parties for specified campaigns.

This statement was false.

As Senator SCHUMER recognized, the Colorado case is about coordinated party expenditures by the national committees on behalf of House and Senate candidates.

The FECA has a formula to calculate these limits based on the size of the state which ranged from $135,000 in Montana to $3,200,000 in California in 2000.

Senator SCHUMER'S attempt to portray these expenditures as soft dollar contributions is false. Coordinated party expenditure always have been, and always will be 100 percent hard money.

The hard money limits to the national committees which were set in 1974 are $20,000 per year for an individual and $15,000 per year from a PAC.

The coordinated party limits at issue in the Colorado case are the last vestige of spending limits in FECA.

In 1976 the Supreme Court in Buckley struck down expenditure limits on candidates and their committees and limits on independent expenditures.

In 1996 the Supreme Court in Colorado I ruled that party committee's can make independent expenditures, in addition to coordinated expenditures. (See sec. 213 of S. 27) The Court remanded the question of the coordinated limits back to the district court which became the Colorado case pending before the court today.

If the Supreme Court strikes down the coordinated party limits in the Colorado case, the only impact is that national parties will be able to spend unlimited amounts on behalf of their candidates.

However, these expenditures must still be all hard dollars, raised under the limits of FECA.

As for concern that striking these limits will lead to enormous amounts of party money going into the system, I would point out that in the 2000 cycle, Republican parties spent $28,000,000 on all coordinated expenditures and Democratic parties spent $20,000,000. This is the total for all races—Presidential, Senatorial and Congressional—470 races nation-wide.

Senator SCHUMER also presented a scenario where national parties are a mere pass-through for candidates.

This is false for soft dollars.

For hard dollars it is called earmarking.

Current law permits donors to earmark contributions through national party committees directly to be used on a specific candidate's behalf. However, it is subject to the $1,000 contribution limit.

For example, if a donor gives $1,000 to the RNC and directs it to a specific candidate, the $1,000 is a contribution to the candidate.

However, if a donor gives $20,000 to the DSCC and directs it to be spent on behalf of a specific candidate, it is a $20,000 contribution to that candidate—a violation of the contribution limits under FECA.

This has been tried before and squarely rejected.

In 1995 the DSCC paid the largest civil fine ever by a national committee for engaging in this type of activity.

In that case the DSCC and democratic Senate candidates were raising large amounts of money into the DSCC to be ''tallied'' for use on that candidate's behalf. These contributions were earmarks and exceeded the contribution limits to candidates.

The DSCC was fined $75,000, forced to end that tally program and was and is required to include specific language on all solicitations clarifying that money raised into the DSCC is spent ''as the Committee determines within its sole discretion.''

To be clear, coordinated expenditures are made with all hard dollars given to the party committees and cannot be restricted for use on specific candidates.

So there is simply no legal way to circumvent that law. The constitutional problem with the Schumer amendment is that if the Supreme Court strikes down the coordinated limit as unconstitutional, then the Schumer provision will require parties to continue to abide by an unconstitutional limit in order to get the lowest unit rate.

This is a classic unconstitutional condition and would make the whole bill further subject to problems in Court.

I hope the Schumer amendment will not be approved.

It is my understanding that there is a desire on both sides to have a quick vote. Is that correct?

Mr. DODD. Yes. If I may, Mr. President, let me respond to my colleague from Kentucky by saying that this amendment has been debated and discussed. The Senator from New York has, I know, at on least three different occasions explained this amendment and the value of it.

I think we have had a pretty good debate. I recommend to my friend and colleague from Kentucky that we have a vote on or in relationship to the Schumer amendment at 5:20.

I believe there is a meeting for some of our colleagues at the White House at around 5:30. My hope would be we might have this vote before that meeting occurred. That would give those who would like to be heard on this amendment some time to come to the floor and to express their views on this.

Mr. MCCONNELL. I say to my colleague from Connecticut, it would be helpful if it were even a little bit earlier, at 5:10 or 5:15.

Mr. DODD. We can do that. I will try to accommodate you on that. The message has gone out. Why don't I take a few minutes myself. Certainly my colleague from New York should have 5 minutes or so to respond to some of the arguments made.

Let me say in relation to this amendment, the Senator from New York, as he has done characteristically throughout his public career—certainly as long as I have known him as a Member of the other body and as a new Member of this body—has literally discovered, in a sense, what could be the new soft money loophole if we do not deal with this.

I say to my colleagues, for those who care about McCain-Feingold, care about what we are trying to do on soft money, as almost every legal expert in the country who is knowledgeable about campaign finance laws has predicted will be the Supreme Court decision in the Colorado case II. The section 441(a)(d) coordinated expenditure limits will be held unconstitutional by a majority of the Supreme Court in the Colorado II case. The practical results is that when spending limits on the national parties are removed from the hard dollar cap, then the parties can contribute to Federal candidates, directly or indirectly, with unlimited sums of money. If I have misspoken here, my colleague from New York will correct me. I believe this summarizes the sum and substance we believe is about to happen. If, of course, the Supreme Court goes the other way and rule the section 441(a)(d) limits constitutional, then this amendment has no effect. But if the coordinated spending limits are overturned, as the Senator from New York has predicted, and as others have suggested, we will not be obligated to return to this subject matter. Knowing how painful it is to spend as many days as we have already talking about campaign finance issues, it could well be another 25 years before we would come back to this subject matter.

In the meantime, we could have a Supreme Court decision that would blow open the doors for hard money, or the new soft money loophole, having spent all these days working to shut down the existing soft money loophole and limiting the hard dollar contributions in order to slow down the money chase.

Let me quickly add, again, I voted for the Thompson modified amendment. I did so reluctantly. I disagree with the notion that we had to increase these hard dollar limits of individual contributors by as much as the Thompson modification allowed.

Now to reject the Schumer amendment, and by doing so allow unlimited hard dollar contributions would fly right in the face of everything a majority of us have spent the last 10 days working to accomplish. We have improved, in my view, the McCain-Feingold bill. It is a better bill in many ways than it was when it came to the floor a week and a half ago.

If we now reject this amendment, in light of what is clearly going to happen in the court, we will undo much of what we have done, not only over this past week and a half, but what Senator MCCAIN and Senator FEINGOLD have achieved, along with those of us who have sponsored or cosponsored their efforts over the past several years.

So I urge my colleagues to take a close look at this. Try to understand what the Senator from New York is saying here. He is saying if, in fact, the coordinated party expenditure limits are ruled unconstitutional, then we need to provide a voluntary mechanism for how such limitations may be dealt with. He does it in a way that tracks the two Supreme Court decisions in the Colorado Republican cases and on first amendment issues very successfully. Having read these decisions carefully, he has now crafted a proposal that is directly in sync with these decisions, including the projected decision in Colorado II, where nexus has to occur between the activities and there is no mandatory requirement attached.

While I am not an expert in this area of the constitution, but based on what I have read, if you meet the two criteria I suggested, then your proposal can pass constitutional muster. I think it is our collective judgment to move forward in this area.

Last week we passed an amendment that would prohibit millionaires from running against us incumbents. We allowed the hard dollar contributions to immediately go up if someone out there challenges us. If the challenger suggests he or she might spend half a million dollars of their own money against us, then the trigger threshold comes into play. I voted against it because I thought it was a ludicrous amendment. But, if you felt comfortable that amendment was adopted and you are protected from the personal wealth of challengers, then don't start breathing a sigh of relief now. The millionaire amendment is here. I would pause before I would enjoy the sense of security. If this amendment is rejected, then you could face million-dollar contributions going to your opponent if, in fact, the Supreme Court does what many think it will do, and strike down the spending limits.

So, again, whether you are a proponent or opponent of McCain-Feingold, I think you ought to support this amendment. None of us here—nor any challenger—should face the possibility of watching almost unlimited contributions come through national or State parties to fund these races without any restrictions at all. Particularly after a majority of us—a significant majority of us—believe there should be some limitations, some slowing down of a process here the amount of money is getting out of hand.

With that, Mr. President, I see my colleague from Michigan who has been eloquent on this subject matter and understands it almost as well as the Senator from New York and certainly far more than the Senator from Connecticut. So I would be happy to yield to him 2 or 3 minutes to correct any mistakes I may have made in describing what this amendment does and how it works.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my good friend from Connecticut. I wish I could come close to him in terms of knowledge of this subject, or my friend from New York.

I just want to very briefly say one thing. We have been guided so far, a majority of us, by a principle; and that principle is, there should be limits. That is what this debate is all about. We have limits on individual contributions. We have now decided what those limits would be. We have limits on PAC contributions, limits to PACs, limits to State and party committees, limits on national party committees, and aggregate limits.

What this debate is about is restoring limits to campaign contributions. Without McCain-Feingold, or a variant thereof, we have the status quo: Unlimited contributions to campaigns. Despite the fact that our law—our law—says there should be limits, there has been a loophole created which has destroyed that law—destroyed the limits—and we have seen the result.

There is one potential loophole left. That is the loophole which the Senator from New York and the Senator from Connecticut have identified. That loophole is, assuming the Supreme Court finds as many think is likely they will find, the amount of money which could be contributed to a candidate by a political party would be unlimited. Without this kind of an effort to set some kind of limit on those contributions, it seems to me we would be violating the very principle that has guided the majority of us in this debate so far.

So I hope we will not give up on that principle. I hope we will be guided by that principle—the principle of the restoration of limits, the preservation of limits, the protection of some limits—because the unlimited amounts of money which have come into these campaigns, it seems to me, have degraded the process, and degraded all of us in the process.

So I commend our good friend from New York for identifying this problem. I hope this will be a bipartisan vote of support, to basically do what the law already intends to do, to set limits on the contributions of parties to candidates. That is in the current law. There is a formula that we are simply trying to protect in the event that the Supreme Court says that process does not pass constitutional muster.

We knew 25 years ago—and we know now—that limits are important, that unlimited, excessive contributions can create a problem in terms of public confidence. This is the one area left which is critical to the principle in McCain-Feingold.

I hope that the amendment of the Senator from New York is adopted, and that it is adopted with a bipartisan vote, because it is so key to this bill accomplishing what it set out to do: Restoration, preservation, protection, of some limits on contributions.

I thank the Chair.

Mr. DODD. Does my colleague from Kentucky wish to be heard?

Mr. MCCONNELL. I tell my friend from Connecticut, I think we are ready to vote.

Mr. DODD. I think the Senator from New York wants 2 minutes to wrap up before the vote.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank the Senator from Connecticut for his leadership and his cogent explanation. With my lack of articulateness, it has taken a few days for me to convince the Chamber that this issue is important, and within 5 minutes the Senator from Connecticut and the Senator from Michigan have summed it up well.

We are here now because we realize how important this issue is. It was said exactly right, in answer to the Senator from Kentucky; some things that are unconstitutional when mandatory are perfectly constitutional when voluntary. This is the case now.

I find it interesting that my friend from Kentucky is talking about the unconstitutionality of this provision when yesterday he voted for one and said: I knew it was unconstitutional, but it will help bring the bill down. Maybe he wants to do the same on this amendment.

Mr. MCCONNELL. If the Senator will yield.

Mr. SCHUMER. I am happy to yield.

Mr. MCCONNELL. I will change my position, if he keeps talking.

Mr. SCHUMER. I want him to change his position. I want to reiterate to my colleagues, this is a crucial amendment. If we don't pass it, we will come back 6 months from now and say, why didn't we do it, because all the work on

McCain-Feingold, much of the work on McCain-Feingold—not all of it but certainly much of it—will be undone.

As my friend from Michigan said, limits are the theme of this bill. To say that we want to limit soft money but put no limits on hard money makes no sense. They are both greenbacks. Too much of one and too much of the other is not a good thing in our political financing system. That is all our amendment seeks to undo. It is reasonable. It is completely within the theme of McCain-Feingold.

I fear that if it is not passed, we will have trouble passing the bill as a whole, and, worse than that, we will have undone a good portion of what we tried to do with McCain-Feingold.

Mr. DODD. Mr. President, the proponents of the amendment are prepared to yield back the remainder of our time.

Mr. MCCONNELL. Mr. President, I yield back such time as may remain on this side.

Mr. DODD. Mr. President, I ask for the yeas and nays on the Schumer amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the Schumer amendment No. 153. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 48, as follows:

[Rollcall Vote No. 56 Leg.]

YEAS—52

Akaka	Dorgan	Lincoln
Baucus	Durbin	McCain
Bayh	Edwards	Mikulski
Biden	Feingold	Miller
Bingaman	Feinstein	Murray
Boxer	Graham	Nelson (FL)
Breaux	Harkin	Nelson (NE)
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carnahan	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Stabenow
Conrad	Kohl	Torricelli
Corzine	Landrieu	Wellstone
Daschle	Leahy	Wyden
Dayton	Levin	
Dodd	Lieberman	

NAYS—48

Allard	Enzi	Murkowski
Allen	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith (NH)
Campbell	Hatch	Smith (OR)
Chafee	Helms	Snowe
Cochran	Hutchinson	Specter
Collins	Hutchison	Stevens
Craig	Inhofe	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Ensign	McConnell	Warner

The amemdment (No. 153) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 152

Mr. DODD. What is the pending business?

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Ohio, Mr. DEWINE.

Mr. DODD. On our side, I know the opponents have a request for about 20 minutes. I don't know if the Senator from Ohio is prepared to accept a time agreement so we know when the next amendment might occur.

Mr. DEWINE. I am not prepared to enter into a time agreement. I will tell my colleague that I don't anticipate it will be very long. We have a couple of speakers and we will be done. I don't want to enter into a time agreement, but I think the projection we see of votes at 6:30, I certainly think we will make that.

Mr. MCCONNELL. Mr. President, for the information of our colleagues, on this side of the aisle, I am aware of about eight amendments, some of which I hope will disappear. I hope by announcing this I do not encourage the proliferation of more. Also, it is my understanding that a discussion is underway to water down or mitigate the coordination language in the underlying bill at the request of organized labor. I assume we will see that amendment at some point during the process. I don't know whether Senator DODD has any idea how many amendments may be left on his side.

Mr. DODD. Mr. President, in response to my friends and colleague from Kentucky, I have 21 amendments. Now, we all have been down this road in the past. How many of those will actually be offered—I know around 12 at this juncture. I have asked the authors of these amendments how serious they are, and I would say around 12 or 13 feel very adamant. They may not need much time. We don't necessarily need 3 hours as the bill requires or allows.

We are constantly working, trying to see if we can't get this number down. We have a list. We are prepared to go with several amendments. I have Senator BINGAMAN with amendments ready; Senator DURBIN has amendments ready; Senator HARKIN has amendments ready. We are prepared to move along based on the schedule the leadership wants to endorse.

Mr. MCCONNELL. It is my understanding the desire of the leadership is to finish up the debate on the DeWine amendment tonight. I understand the Senator from Ohio is not interested in a time agreement at this point but to have the vote in the morning.

In the meantime, I say to my colleague from Connecticut and others, with regard to any amendment that might be offered to reduce the opposition of the AFL-CIO to the bill by massaging the coordination language, we would like to see that when it is ready. That is the amendment I have been predicting for a week and a half, that there would be at some point an effort to water down the coordination language in the underlying McCain-Feingold bill in order to placate the AFL-CIO. We are anxious to see that language. I am sure it will pass, once offered, but we are anxious to take a look and make sure all Members of the Senate are aware of the substance of it.

It looks as though I may have fewer amendments to deal with than Senator DODD. I suspect the sooner we shut up, the Senator from Ohio can continue his discussion of his amendment.

Mr. DODD. I am for that.

Mr. MCCONNELL. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I have used about 30 minutes of my time and I think at this point I yield the opponents some of their time.

For the information of Members of the Senate, we have one or two speakers who will not speak very long, and we will be prepared to vote.

Mr. DODD. Mr. President, I yield 6 or 7 minutes to my colleague from Vermont in opposition to the DeWine amendment.

Mr. JEFFORDS. Mr. President, I rise today to once again discuss the Snowe-Jeffords provisions in the Bipartisan Campaign Reform Act. My focus today will be rassuring you that the Snowe-Jeffords provisions are constitutional.

We took great care in crafting our language to avoid violating the important prrinciples in the first amendment of our Constitution. In reviewing the cases, limiting corporate and union spending and requiring disclosure have been areas that the Supreme Court has been most tolerant of regulation.

Since 1907, federal law has banned corporations from engaging in electioneering. In 1947, that ban was extended to prohibit unions from electioneering as well. The Supreme Court has upheld these restrictions in order to avoid the corrupting influences on federal elections resulting from the use of money by those who exercise control over a large amount of capital. By treating both corporations and unions similarly we extend current regulation cautiously and fairly.

We also worked to make our requirements sufficiently clear and narrow to overcome unconstitutional claims of vagueness and overbreadth. This required us to review the seminal cases in this area, including Buckley v. Valeo. I have heard some of my colleagues argue that Buckley clearly shows that the Snowe-Jeffords provisions are unconstitutional. I must disagree most strongly with that reading.

In fact, the language of the case should—must be read to show that the Snowe-Jeffords provisions are constitutional. In Buckley the court limited spending that was ''for the purpose of influencing an election.'' As I noted in my speech last Friday, 80 percent of the voters, an overwhelming majority, see these sham issue ads as trying to

influence their vote and the outcome of the election.

Buckley also allowed disclosure of all spending, ''in connection with an election.'' As I discussed last Friday, 96 percent of the public sees these ads as connected with an election. In addition, the chart my colleague Senator SNOWE presented on the Senate floor last Monday clearly demonstrates that these ads are run in lock step with the candidate's own ads. This makes sense this clearly proves that these sham issue ads are well connected with the election.

A final point concerning the Buckley decision. The Supreme Court was concerned about both deterring corruption and the appearance of corruption, plus ensuring that the voters were properly informed. The Snowe-Jeffords provision satisfies the Court's concerns. We deter the appearance of corruption by shining sunlight on the undisclosed expenditures for sham issue advertisements. Corruption will be deterred when the public and the media are able to see clearly who is trying to influence the election. In addition our provisions will inform the voting public of who is sponsoring and paying for an electioneering communication. Unlike what our opponents may say, the Supreme Court using the standards articulated in the Buckley decision would uphold the Snowe-Jeffords provision as constitutional.

Our opponents also point to the Supreme Court decision in Massachusetts Citizens For Life as demonstrating that the Snowe-Jeffords provisions are unconstitutional. I would agree with my opponents that the MCFL decision seems to reaffirm the express advocacy test articulated in Buckley, but I would argue in upholding this test that the Court actually made it even more likely that the Snowe-Jeffords provisions would be upheld as constitutional. The MCFL decision broadens the standard articulated in Buckley by analyzing the context of a communication and divining its ''essential nature.'' As the results from the BYU Center for the Study of Elections and Democracy study I discussed earlier show, the esential nature of these sham issue-ads is to influence the outcome of an election. Presented with all of the facts provided by myself and Senator SNOWE, the Supreme Court would be consistent only in finding our provisions constitutional under the standards laid out in Buckley and MCFL. So rather than strengthening their case, the MCFL decision shows that the Court is willing to examine the issue closely and look beyond a strict interpretation of the magic words test that some have said the Buckley decision created.

A final court decision my opponents point to as supporting their position that the Snowe-Jeffords provisions are unconstitutional is the recent Vermont Right to Life decision in the second circuit. I must first point out that as a circuit court opinion it is not the law of the land. That can only come from the decisions of the Supreme Court, on which the provisions of the Snowe-Jeffords provisions are built.

Additionally, the facts that faced the second circuit in the Vermont Right to Life case are clearly distinguishable from the Snowe-Jeffords provisions. Unlike the Vermont statute that was vague and overbroad, our provisions are narrowly tailored to avoid overbreadth, and create clear standards about what is allowed or required by our provisions, thus avoiding the vagueness in the Vermont statute. In addition, the court focused much of its discussion in declaring the Vermont statute unconstitutional on the effects of the provision on modes of communication not covered by Snowe-Jeffords. As the Snowe-Jeffords provisions do not cover these types of communication, our language is distinguishable from the facts faced by the second circuit. So, don't be fooled when the opponents of our provision say that the Vermont Right to Life case clearly shows that the Snowe-Jeffords provisions are unconstitutional. They are comparing apples with oranges, and such a conclusion in inappropriate.

In conclusion, James Madison once said,

> A popular government without popular information is but a prologue to a tragedy or a farce or perhaps both. Knowledge will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

The Snowe-Jeffords provisions will give the voters the knowledge they need. I ask for my colleagues continued support in this vital effort to restore faith in our campaign finance laws.

It is time to restore the public's confidence in our political system.

It is time to increase disclosure requirements and ban soft money.

It is time to pass the McCain-Feingold campaign finance reform bill. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, my colleague from the State of Maine wishes 10 minutes. I am happy to yield 10 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I thank the Senator from Connecticut for yielding me some time to address some of the issues that have been raised by the amendment and the motion to strike by our colleague from Ohio, Senator DEWINE.

I urge this body to oppose that motion to strike the provisions known as the Snowe-Jeffords provision. A vote to strike these provisions is essentially a vote against comprehensive reform. A vote against this provision is a vote against balanced reform. A vote against this provision is a statement that we are only willing to tackle part—albeit a vital part—of the problem that is confronting the political system of today.

The other part of the problem that we seek to address through these provisions is the glut of advertisements in elections—close to election time, close to election day—that seek to influence the outcome of Federal elections. So there is no disclosure. We have no disclosure. We do not know who is behind those advertisements. Yet they are very definitively influencing the outcome of Federal elections.

To illustrate the amount of advertising, you only have to look at what has happened since 1995–1999, when $135 million to $150 million was spent on these types of commercials. Now in the election of 2000, over $500 million was spent.

Is everybody saying it does not matter? That we should not know who is behind these types of commercials that are run 60 days before the election, 30 days before a primary, whose donors contribute more than $1,000? Are we saying it does not matter to the election process? Are we saying we do not care?

I know the Senator from Ohio is saying these provisions are unconstitutional. I would like to make sure my colleagues understand that this provision was not developed in a vacuum. It was developed with more than 70 constitutional experts, along with Norm Ornstein, a reputable scholar associated with the American Enterprise Institute. They looked at the constitutional and judicial implications of the Buckley v. Valeo decision back in 1976. They crafted this type of approach, which carefully and deliberately avoids the constitutional questions that my colleague, the Senator from Ohio, suggests may be raised.

First of all, we designed a provision to address the concerns that were raised in the 1976 Buckley decision about overbroad, vague types of restrictions on the first amendment. So what we said was that we have a right to know who is running these ads 60 days before a general election when the group has spent more than $10,000 in a year and whose donors have contributed more than $1,000 to finance these election ads—over $550 million of which were run in the election of 2000, more than three times the amount that was spent in the election of 1996.

We also went on to say that unions and corporations would be banned from using their treasury money financing these ads when they mention a candidate 60 days before a general election or 30 days before a primary. Again, there is a basis in law extending back to 1907, when we had the Tillman Act passed by Congress that banned the participation of corporations in elections and, in 1947, the Taft-Hartley Act that prohibited unions from participating directly in Federal elections. This amendment and provision is building upon those decisions that were made by Congress that have been upheld by the Court. In fact, the most recent decision of 1990, Austin v. Chamber of Commerce, is again upholding

those decisions in the prohibition of the use of corporations participating in Federal elections.

That is what we have done. That is what we sought to do when designing this amendment.

Are we saying these ads do not make a difference? We have seen and examined a number of studies over the last few years that talk about the influence of these ads on elections. What have we determined? No. 1, and I guess it is not going to come as a surprise to this audience which has participated in election after election and have seen these ads, but more than 95 percent of the ads that are run in the last 2 months, the last 60 days of the election, mention a candidate; 94 percent of those ads are seen as attempting to influence the outcome of an election. They mention a candidate's name. Virtually all the ads that are run in the last 60 days mention a candidate's name. Don't we have the right to know who is running those ads, who is supporting those ads, who is financing those ads? Yes. The Supreme Court has said it is permissible for Congress to have this requirement. It is in our interest. We have the right. It is not just the right to free speech. It is similar to other restrictions that have been incorporated in Federal election laws.

Ninety-five percent of the ads that are run for the final 2 months of an election mention a candidate. The worst thing when organizations run these types of ads is that they mention a candidate by name 60 days before an election. We have the right to know who the $1,000 donors are.

We are also saying that unions and corporations would be banned from running those types of ads using their treasury money when they are mentioning a Federal candidate the last 60 days because of preexisting law that has stood for almost a century and has been upheld by the Federal court.

The next chart shows that, again, 94 percent have spots during the 2 months before the election making a case for a candidate.

Again, we are entitled to know who is behind those types of advertisements. We have the right to know. The public has the right to know because they are playing a key role.

We had a number of studies that examined the impact of these ads.

First of all, it wouldn't come as a surprise to this audience once again that 84 percent of the ads that were aired in the last 2 months of a Federal election were attack ads. They were negative. And they mentioned a candidate's name.

Again, we are saying we have the right to know. The Supreme Court will uphold our right to know and the public's right to know. This is sunlight; it is not censorship.

In this next chart, only 1 percent of the ads were true issue advocacy ads.

In the final 2 months of an election, 99 percent identified a candidate by name. They were attack ads. Only 1 percent would be construed as being legitimate issue advocacy ads.

For example, on an ad that would say, ''Call your Senator on an issue that is before Congress,'' they would still have that right. If they identified a candidate by name, however, they would be required to disclose.

On this chart we see the relationship between TV ads and the congressional agenda.

We are trying to make distinctions between true issue advocacy ads and election ads. That is what this Snowe-Jeffords provision does. It is carefully crafted to make sure we have a narrow provision identifying the time period of 60 days and 30 days. We ban only union and corporation money. So the entities know which provisions affect them in the election.

Then we also require disclosure of those donors who contribute more than $1,000 to organizations that run ads that mention a candidate in the 60-day window.

Again, groups or individuals will know exactly what is permissible and what is not and whether or not they would be running afoul of the law. That is what the Supreme Court said—that it not result in an overly broad or vague provision to ultimately have a chilling effect on the constitutional right of freedom of speech. That is why this provision was so narrowly and carefully drawn, with constitutional experts examining each and every provision.

Look at the relationship between TV ads and congressional agenda. In the last 60 days we do a lot here in Congress before an election. So you are going to affect organizations' abilities to talk about those issues in their ads. Guess what. All the ads, virtually speaking, run by these organizations that mention or identify a candidate in that 60-day window parallel the ads that are run by the candidates themselves.

In the lower line at the bottom, which is the line that reflects the issues being debated in Congress, you can see that there is virtually no parallel between what we are discussing in Congress and the ads that are being run by organizations in that 60-day window. They parallel the ads with a candidate's ad, which again reflects one thing—that these ads are designed to influence the outcome of an election.

There was a study of just 735 media markets in this last election. Guess what. One hundred million dollars was spent in the last 2 weeks of the election on advertisements that identified a Federal candidate by name in that 60-day period—in fact, in that 2-week period.

I think the public deserves the right to know who is financing those ads and who is attempting to affect the outcome of an election given the amount of money that has been invested in these types of commercials. As I said, it was three times the amount in the last election compared to the 1996 election. They are ultimately engulfing the political process. In some cases, these organizations, whether they exist in the State in which they are running these ads or not, are having a greater impact than the ads the candidates run themselves.

It may come as a surprise to you that in the focus group that examined the Snowe-Jeffords provision and looked at the ads that were run in that 60-day period—guess what—they didn't even see the candidate's ads being the ones that influenced the outcome of a Federal election. They saw these so-called sham ads as the ones that influenced the outcome of a Federal election.

I think we need to take this step. It is a limited step; it is not a far-reaching step.

The PRESIDING OFFICER. The Senator's 10 minutes has expired.

Ms. SNOWE. May I have an additional 2 minutes?

Mr. LOTT. Mr. President, if the Senator will yield, we have a consent request with regard to how to proceed for the rest of the night and tomorrow.

UNANIMOUS CONSENT AGREEMENT

Mr. President, I ask unanimous consent that time on the DeWine amendment be used during tonight's session and, following that time, the Senate proceed to morning business. I further ask unanimous consent that the Senate resume consideration of the bill at 9:30 a.m. and there be 15 minutes for closing remarks on the amendment, to be equally divided, and the Senate then proceed to a vote in relation to the DeWine amendment. I further ask unanimous consent that following that vote the Senate proceed to the Harkin amendment for 2 hours equally divided in the usual form, and following that time the Senate proceed to vote on or in relation to the Harkin amendment.

Let me note that I didn't get a chance to clear this with Senator REID. But I understand Senator WARNER has an amendment he wants to offer.

Mr. WARNER. Mr. President, I thank the distinguished leader. I should like to offer it, and I shall withdraw it. I will require no more than 10 minutes of time at the most convenient point this evening before we complete our work on this bill.

Mr. LOTT. I modify the request to say, as I have already read it, except that after the DeWine amendment the time be used tonight and then go to the Warner amendment at that point. Following that, we would go to morning business.

Mr. REID. Mr. President, reserving the right to object—I will not—I hope leadership will recognize the great work done today on this bill. I don't know how great it has been, but certainly it has been a lot of work. Senators DODD and MCCONNELL have done an outstanding job moving this matter along. It has been very tedious today. I would like for the leader and Senator DASCHLE to recognize what good work they have done.

Mr. LOTT. Mr. President, I certainly agree with that. These two managers of

this bill have worked together very closely—Senators MCCONNELL and DODD. Their job has been particularly difficult this time because they are trying to accommodate everyone on all sides of this issue on both sides of the aisle and are trying to also accommodate the wishes of the two leaders on both sides as well as the principal sponsors of this bill. They have worked hard to make good progress. Without commenting on the work product result, I think they certainly deserve a lot of credit for their yeomen efforts to try to keep it calm and moving forward.

Mr. REID. Senator WARNER will withdraw his amendment tonight?

Mr. LOTT. He will.

The PRESIDING OFFICER (Mr. BENNETT). Is there objection?

Without objection, it is so ordered.

Mr. LOTT. In light of this agreement, there will be no further votes tonight. The next vote will occur at approximately 9:45 a.m. Thursday. Also, the managers intend to complete this bill by the close of business tomorrow, so that is going to mean a lot more work. There are a number of amendments that are still pending. But if Senators expect to complete our work tomorrow, we are going to have to put our nose to the grindstone and just make it happen. So we should expect numerous votes tomorrow. And we would hope to finish at a reasonable hour early in the evening or late in the afternoon.

I yield the floor.

Mr. MCCAIN. Could I be yielded about 4 minutes to speak on the amendment?

Mr. LOTT. Mr. President, I believe Senator SNOWE had gotten consent for 2 additional minutes.

The PRESIDING OFFICER. Does the Senator from Maine ask for additional time? The consent was not given because of the interruption of the majority leader.

Mr. LOTT. I do not believe there would be any objection.

Ms. SNOWE. The time is controlled by whom?

The PRESIDING OFFICER. The time is controlled by the Senator from Ohio and the Senator from Nevada.

Mr. REID. The Senator from Maine is given 3 minutes.

Ms. SNOWE. I will yield to the Senator from Arizona. He needs 4 minutes. Can we have 10 minutes?

Mr. REID. Following the Senator from Maine, the Senator from Arizona is yielded 5 minutes.

Mr. MCCAIN. Could we have a total of 10 minutes?

Mr. REID. Yes.

Ms. SNOWE. I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Nevada. Again, I thank Senator MCCONNELL for the level and tenor of this debate. I understand his concerns about one additional amendment we will have tomorrow concerning coordination, and I have given him the language. We want to work with him on that particular amendment.

I also know a lot of time and attention is going to be devoted to the issue of severability. I thank the Senator from Maine for a very important presentation. I find myself between two of my dearest friends on this amendment. I, obviously, am strongly in favor of the Snowe-Jeffords amendment which the Senator from Maine and the Senator from Vermont have worked on for literally years together. This Snowe-Jeffords amendment, unlike some of the business we do around here, was not hastily thrown together. It was crafted after careful consultation with constitutional experts all over America. It clearly addresses a growing problem in American politics.

I believe that the Snowe-Jeffords amendment, if removed, would open up another huge channel for the use of soft money into so-called independent campaigns.

I also listened with great attention to my friend from Ohio, Senator DEWINE. I understand his concerns, and I appreciate them. He makes a very strong case. But I would like to say why we think Snowe-Jeffords is constitutional and why we are convinced of it.

First, it avoids the vagueness problem outlined in Buckley by instituting a bright-line test for what constitutes express advocacy versus issue advocacy. People will know if their ads are covered by this statute. They will know whether it is covered by Snowe-Jeffords.

Second, the main constitutional problem with bright-line tests is that they eliminate vagueness at a cost of overbreadth—a situation in which constitutionally protected speech such as issue advocacy is unintentionally swept in by the statute. Specifically, the Supreme Court is concerned whether there is ''substantial overbreadth'' as far as the statute is concerned.

Snowe-Jeffords minimizes the overbreadth concern. It only covers broadcast ads run immediately before an election that mention a specific Federal candidate. Studies show that only a minuscule number of these types of ads in this time period are strictly issue ads. Anyone who observed the last couple campaigns would attest to that.

Besides, we all know that Buckley's ''magic words'' are not necessary to make a campaign ad. In fact, a Brennan Center for Justice analysis of the last congressional election showed that only 1 percent of candidates' own campaign advertising used express advocacy language—in other words, magic words—to promote the candidate.

In sum, Buckley left the door open for Congress to define express advocacy. That is what Snowe-Jeffords seeks to do, in keeping with the Supreme Court's concern about protecting free speech guaranteed by the first amendment. In addition, we can demonstrate that the Court's definition of ''express advocacy''—magic words—has no real bearing in today's world of campaign ads.

You never see an ad anymore that says ''vote for'' or ''vote against.'' You see plenty of them that say: Call that scoundrel, that no-good Representative of yours or Senator of yours, who is guilty of every crime known to man. Call him. Tell your Senator that you want thus and such and thus and such.

We have seen it all develop to a fine art. I believe Snowe-Jeffords is a very vital part of this bill. If it were removed, it would have a very significantly damaging effect on our desire to try to enact real and meaningful campaign finance reform.

I thank my friend from Ohio for his impassioned advocacy of the other side. I believe this is really what this debate has been all about: What we have just seen between Senator DEWINE and Senator SNOWE, an open and honest and informed ventilation of a very important issue to the American people. I am very proud of the performance of both because I think the American people have learned a lot from this debate, especially on this very important amendment.

Mr. President, I yield back the remainder of my time.

Ms. SNOWE. Mr. President, I thank Senator MCCAIN for his words regarding these provisions and for underscoring the importance and the significance and the meaning of the Snowe-Jeffords provision as outlined in the McCain-Feingold legislation.

The preponderance of these ads in the political process has to be disturbing to each and every one of us, not to mention the American people. That is what it is all about and what we need to address.

How can we say we are going to allow these so-called sham ads to go unchecked? How are we going to say to the American people that somehow they or we do not have a right to know who is financing these ads?

As Senator MCCAIN indicated, even candidates now, who already come under the Federal election laws, do not use the magic words ''vote for'' or ''against'' because what has become most effective is not using those magic words to get the point across. That is why all of these organizations have taken to running ads because they know what is more effective and more influential.

In every focus group and study group that has been conducted over the last few months, to take the Snowe-Jeffords provisions and use them in a focus group, to see what the response was of the individuals included in that group—guess what—they were most influenced by those organizational ads that mention a candidate by name but do not use those magic words. The Supreme Court said there isn't one single permissible route to getting where we are going in terms of restrictions and

changes in election laws. And the fact is, since 1976, Congress has not passed a law concerning campaign financing, has not sent any law to the Court because we have not passed anything in the last quarter of a century. So it has no guidepost. But the Court was addressing in 1976 what was happening in 1976. We well know what has changed and transpired in over a quarter century. We have seen the kind of development and evolution of these ads that has taken a very disturbing trend and change in the election process.

I hope we defeat the motion to strike by my colleague, the Senator from Ohio, because truly we are getting at a very serious problem that has characterized the political process in a way that does not engender confidence in the American people.

These ads are intended to affect an election. They are overwhelmingly negative. Ninety-nine percent mention a candidate in that 60-day window. Are we saying that we should allow them to go unchecked? I say no.

I know the Supreme Court will uphold this provision because in analyzing every decision since and in analyzing what the Court had said even previously, this is not treading on the constitutional rights of those who are willing to express themselves.

This is a monstrosity that has evolved in terms of the so-called sham ads that are having a true impact on our election process in a way that I do not think the Supreme Court could foresee back in 1976, and we, as candidates, could not possibly envision. I ran for Congress in 1978. No one heard of these ads. Independent expenditures were even rare at that moment in time. What has happened in the election process has taken place in the last few years. Those expenditures have tripled in these types of advertisements that are having a true impact on elections.

That is what we are talking about. I have a chart that shows the degree to which the ads were intended to influence your vote. The candidates' ads are less influential than these ads to which we are referring in the Snowe-Jeffords amendment. They have more influence in the overall election than the candidates' ads.

We do have a right to know. We are talking about disclosure. The Supreme Court will uphold that view that, yes, the public does have a right to know. These provisions are not chilling first amendment rights. People will have very defined guidance under these provisions that would inform any group, any individual who has an intention of running these types of advertisements.

Norman Ornstein, who was instrumental in developing this provision, along with numerous constitutional experts, spoke in a column recently. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Congress Inside Out]

LIMITS ON SO-CALLED ''ISSUE ADVOCACY'' WILL PASS CONSTITUTIONAL TEST

(By Norman J. Ornstein)

Is McCain-Feingold unconstitutional? When campaign finance reform is debated in the Senate this week, the answer to this question will be a key one. There will no doubt be questions raised about banning soft money, but despite the bleating of reform opponents, that proposal seems to be on sound constitutional footing. Soft money, after all, was neither a natural development nor a court-generated phenomenon; rather it was created in 1978 by a bureaucratic decision of the Federal Election Commission. If a regulatory commission could invent soft money, Congress can uninvent it.

More problematic is the campaign reform measure's provision on so-called issue advocacy, an amendment known as Snowe-Jeffords. Would it pass Supreme Court muster? No doubt some Senators opposed to reform will offer elaborate smoke screens to scare their colleagues. But there is legitimate concern about the constitutionality of the proposal, even among many sympathetic to it.

Changes in the rules surrounding anything close to issue advocacy, as opposed to express advocacy to elect or defeat candidates, are delicate and tricky. This area is at the heart of the First Amendment and cannot be reformed lightly. Still, when Senators take a careful look at Snowe-Jeffords and the reasoning behind it, their concerns should be assuaged. There is every reason to believe that this measure will withstand constitutional scrutiny.

The challenge here starts with the language of the landmark 1976 Supreme Court decision Buckley v. Valeo that accepted parts of a 1974 Congressional act reforming the campaign finance system and rejected others, and continues to govern our campaign finance rules. The court rejected as overly broad the 1974 Congressional decision to include in its regulatory net any communication ''for the purpose of influencing'' a federal election. Instead, the court drew a line between direct campaign activities, or ''express advocacy,'' and other political speech. The former could be regulated, at least in terms of limits on contributions; the latter had greater First Amendment protection. How to define express advocacy? The High Court in a footnote gave some suggestions to fill the resulting vacuum and to define the difference between the two kinds of advocacy. Express advocacy, the justices said, would cover communications that included words such as ''vote for,'' ''vote against,'' ''elect'' or ''defeat.'' The residual category included ''issue'' advocacy.

The court did not say that the only forms of express advocacy are those using the specific words above. Those were examples. However, political consultants and high-priced campaign lawyers are like the raptors in ''Jurassic Park''—they regularly brush up against the electric fence of campaign regulation, trying to find dead spots or make the fence fall down entirely. In this case, they egged on parties and outside groups to behave unilaterally as if any communication that did not use these specific so-called ''magic words''—no matter what else they did say—was by definition ''issue advocacy'' and thus was exempt from any campaign finance rules. By this logic, ads or messages without any issue content whatsoever that is clearly designed (usually by ripping the bark off a candidate) to directly influence the outcome of an election could use money raised in any amount from any source, with no disclosure required.

Ads of this sort have exploded in the past few elections, with outside groups and political parties exploiting a loophole to run campaign spots outside the rules that apply to candidates. In the past couple of election cycles, solid, substantial and comprehensive academic research, examining hundreds of thousands of election-related ads, has demonstration two things. One was that only a minuscule proportion of the ads run by candidates themselves—the sine qua non of express advocacy—actually used any of the so-called ''magic words'' that shaped the court's definition of express advocacy a quarter century ago. Secondly, hundreds of millions of dollars in political ads—nearly all viciously negative, personality-driven attacks on candidates without issue content—have blanketed the airwaves right before the elections, dominating and drowning out candidate communications. The parties and outside groups that have run them have declared that they fall under ''issue advocacy,'' meaning no disclosure and no limits on contributions are required.

These sham issue ads have drastically altered the landscape of campaigns, reducing candidates to bit players in their own elections and erasing a major share of accountability for voters. But under Buckley, as interpreted by the campaign lawyers, this process has been unchallenged. Lower courts have routinely upheld the framework and most of the specifics of Buckley, leading reform opponents and many objective observers to question whether any change in the Buckley standards or framework could possibly pass constitutional muster in the Supreme Court.

That view ignores a fundamental reality. Since it spoke in 1974, Congress has been essentially silent on campaign finance reform. Buckley v. Valeo is in effect the law of the land because Congress has not superseded it by filling the vacuum in the quarter century that followed. If Congress acted, the Supreme Court would give it due deference. In a 1986 decision on campaign finance and the role of corporations (Federal Election Commission v. Massachusetts Citizens for Life), Chief Justice William Rehnquist, in a separate opinion joined by three other justices, noted, ''We are obliged to leave the drawing of lines such as this to Congress if those lines were within constitutional bounds.''

The lines Congress drew in 1974 were not within constitutional bounds. But other lines, different from the Congress in 1974 and the court's in Buckley, can be, especially if Congress makes clear that its views are based on both careful deliberation and strong emotional evidence.

Two years ago, I led a group of constitutional scholars in careful and systematic deliberation over the judicial and constitutional framework behind Buckley v. Valeo, the dramatic changes in campaign behavior that have occurred in the past several years, and the ways, within the Buckley framework, that the system can be brought back into equilibrium.

The result was a new approach, which was embraced by Sens. Olympia Snowe (R-Maine) and Jim Jeffords (R-Vt.) and several of their colleagues, and converted into legislation.

The Snowe-Jeffords provision defines ''electioneering'' as a category of communication that is designed to directly shape or change the outcome of federal elections. Unlike the 1974 overly broad Congressional definition, Snowe-Jeffords is much more specific, with a definition that includes substantial broadcast communications run close to an election and that specifically targets a candidate for office in that election. Research has shown that only a sliver of all issue ads meeting this definition in the last campaign (well under 1 percent) were by any standard genuine issue ads. If Senators are wary that even this definition is too broad,

it is easily possible to refine the definition of targeting to reduce the number to perhaps 1/10th of 1 percent of the ads.

Snowe-Jeffords bans the use of union dues or corporate funds for broadcast electioneering communications within 60 days of an election and requires disclosure of large contributions designated for such ads. As recently as 1990, in Austin v. Michigan Chamber of Commerce, the Supreme Court reaffirmed the notion that corporations lack the same free-speech rights as individuals and some other groups; other decisions have made the same point about unions.

In Buckley itself, the court said that disclosure requirements are permissible if they provide citizens with the information they need to make informed election choices or help safeguard against corruption and reduce the appearance of corruption. As long as disclosure doesn't produce the chilling effect of requiring an organization to disclose all of its donors, which Snowe-Jeffords avoids, it clearly meets court guidelines. Sen. Mitch McConnel (R-Ky.) regularly refers to the court's 1958 decision NAACP v. Alabama to argue that disclosure requirements are unconstitutional. However, that is a misinterpretation of the decision, which said that a requirement of an organization to disclose all its contributors would be inappropriate. That is not at all what Snowe-Jeffords does.

Now add together the clear deference to Congress' views that Chief Justice Rehnquist has expressed, the clear evidence from impeccable academic research showing the fallacy behind the so-called ''magic words'' test in Buckley, and the restrained and carefully drawn language in Snowe-Jeffords defining a narrow category of ads and relying on past court decisions about disclosure and the roles of unions and corporations. These three factors make it reasonable to believe that the Supreme Court would rule that a reform that includes Snowe-Jeffords is within constitutional bounds.

Ms. SNOWE. He said:

The court rejected as overly broad the 1974 Congressional decision to include in its regulatory net any communication ''for the purpose of influencing'' a federal election. Instead, the court drew a line between direct campaign activities, or ''express advocacy,'' and other political speech. The former could be regulated, at least in terms of limits on contributions; the latter had greater first amendment protection. How to define express advocacy? The High Court in a footnote gave some suggestions to fill the resulting vacuum and to define the difference between the two kinds of advocacy. Express advocacy, the justices said, would cover communications that included words such as ''vote for,'' ''vote against,'' ''elect'' or ''defeat.'' The residual category included ''issue'' advocacy.

The court did not say that the only forms of express advocacy are those using the specific words above. Those were examples.

Now we hear the only way we can have these ads covered is if they use those magic words. As Norman Ornstein is saying in his column, the Court was citing examples back in the Buckley v. Valeo decision in 1976. He went on to say, the fundamental reality is that Congress had been essentially silent on campaign finance reform since it spoke in 1974.

Buckley v. Valeo is in effect law of the land because Congress has not superseded it by filling the vacuum in the quarter century that followed. If Congress acted, the Supreme Court would give its due deference.

The lines Congress drew in 1974 were not within constitutional bounds. But other lines, different from Congress' in 1974 and the court's in Buckley, can be, especially if Congress makes clear its views are based on both careful deliberation and strong empirical evidence.

The PRESIDING OFFICER. The time of the Senator has expired.

Ms. SNOWE. Mr. President, I hope my colleagues will vote against the motion to strike that has been offered by our colleague from Ohio. It would remove a fundamental provision in the legislation before us. We cannot have comprehensive reform without addressing this egregious development that has occurred in the election process.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, in a moment I will yield to the chairman of the Judiciary Committee, Senator HATCH. I do want to briefly respond to the comments of my friend from Maine, my friend from Vermont, and my friend from Arizona. I appreciate very much their comments.

One thing they did not mention and that is important for us to remember, as we look at this amendment and as we look at how the bill is currently written, is that Snowe-Jeffords is now Snowe-Jeffords-Wellstone. It is fundamentally different than the original provision about which my colleagues have talked for the last 20 minutes or so.

Very simply, Snowe-Jeffords, as originally written, did this: Under current law express advocacy is not restricted for unions and corporations. What Snowe-Jeffords did is to say that 60 days out from an election, unions and corporations—it is usually unions who are doing it—would be prohibited from mentioning the name of a candidate. It is a major change in what is going on today, a major restriction on a union's ability to communicate, a fundamental change in the law.

Under Snowe-Jeffords, express advocacy is expanded to include any message with the candidate's name 60 days before the election and, if they do that, it is illegal.

That is not what we are talking about. Snowe-Jeffords is now Snowe-Jeffords-Wellstone, and it has been dramatically changed and expanded. I think the original language, quite candidly, you can argue either way whether it is constitutional. Frankly, no one in this Senate is going to know until the Supreme Court tells us. The Wellstone language that is now a part of Snowe-Jeffords is absolutely unconstitutional. I have talked to a number of Members on the floor who voted on both sides of the original Wellstone amendment. I haven't found one yet—I am sure someone will come to the floor in a minute; I am sure my colleague from Minnesota may come—who will tell me it is constitutional because what does it do? It takes the original Snowe-Jeffords and expands it and says, not only will labor unions not be able to do this within 60 days of an election, not only will corporations not be able to do it, but now everybody else can't do it. Any groups that want to get together and buy an ad that mentions the candidate's name will no longer be able to do that.

So within 60 days of an election, at the time when political debate should be the most respected, when political debate has its greatest impact, the Snowe-Jeffords-Wellstone amendment now says, no, you can't do it.

That is absolutely unconstitutional. That is the state of the bill today. That is what Members have to ask themselves when they vote on this amendment. Are you willing to accept a bill that in all probability is going to pass that has a provision in it that is blatantly unconstitutional? I hope on reflection my colleagues on both sides of the aisle, when they look at that, will say: I don't want to do that. I don't want to cast a vote for a bill that is blatantly unconstitutional.

The only chance Members are going to have to correct that is with the DeWine amendment.

I yield at this time to the distinguished chairman of the Senate Judiciary Committee, the Senator from Utah, Mr. HATCH.

Mr. HATCH. Mr. President, as my colleagues in this body are aware, unlike contributions to a candidate's campaign, expenditures of money to influence public opinion has been accorded nearly ironclad first amendment protection by the U.S. Supreme Court. In fact, I know those who would argue it is absolutely ironclad.

The reason for this protection is simple to understand. Freedom of speech is one of the bedrock protections guaranteed for our citizens under the Constitution of the United States. Nowhere is the role of free speech more important than in the context of the elections we hold to determine the leaders of our representative democracy. As the Supreme Court stated in Buckley:

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order to assure the unfettered interchange of ideas. . . .

Obviously, we would have no democracy at all if government were allowed to silence people's voices during an election. I have spoken before more generally on some of the constitutional limits on our efforts to regulate campaigns. Today I rise to speak more specifically about the limitations on expenditures.

Under our Constitution, a person simply cannot be barred from speaking the words ''vote for Joe Smith.'' Under our Constitution, a person simply cannot be barred by speaking the words ''lower my taxes.'' Under our Constitution, a person cannot be simply barred from speaking the words ''provide our seniors with a prescription drug benefit.'' The right to speak any of these

phrases at any time is protected as a core fundamental right under the first amendment.

It is especially important to our democracy that we protect a person's right to speak these phrases during an electoral campaign because it is through elections that the fundamental issues of our democracy are most thoroughly defined. It is through elections that the leaders of our democracy are put in place to carry out the people's will.

Not only does a person have a right to speak out during a campaign regarding candidates and issues, a person also has a right to speak out in an effective manner. The right to speak would have little meaning if the government could place crippling controls on the means by which a person was permitted to communicate his or her message. For instance, the right to speak would have little meaning if a person was required to speak in an empty room with no one listening.

Accordingly, the Supreme Court has consistently ruled that Congress may not burden a person's constitutional right to express his or her opinion during an electoral campaign. And to effectuate these rulings, the Court has consistently held that Congress may not burden a person's right to expend money to ensure that his or her opinion reaches the broadest possible audience.

In Buckley, the Supreme Court made a fundamental distinction that has survived to this day, a distinction that must inform our discussion of campaign finance, and a distinction that continues to place significant limitations on what reforms are permissible under the strictures of the first amendment of the U.S. Constitution.

With respect to expenditures, the Court has said this:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. . . . The expenditure limitations contained in the Act represents substantial rather than merely theoretical restraints on the quantity and diversity of political speech. The . . . ceiling on spending . . . would appear to exclude all citizens and groups . . . from any significant use of the most effective modes of communication.

As recently as last year, in the case of Nixon v. Shrink Missouri Government PAC—and that is a 2000 case—the Court reaffirmed its holding in Buckley, quoting extensively from the Buckley opinion and reiterating that expenditure restrictions must be viewed as ''direct restraints on speech,'' irreconcilable with the first amendment.

As I said before, the McCain-Feingold legislation is well intentioned in its effort to remove the influence of big money from our electoral process. However, several provisions of the proposed legislation are simply irreconcilable with the first amendment of the U.S. Constitution. It is not Congress' role to pass unconstitutional legislation and stand by while that legislation is struck down by the courts.

The provision of the McCain-Feingold legislation that unconstitutionally burdens free speech is section 201, the so-called Snowe-Jeffords amendment. That is what the current DeWine amendment seeks to address. Snowe-Jeffords is designed to address what many have characterized as a loophole in the campaign finance laws that allows third parties prior to an election to fund advertisements which relate exclusively to an issue and refrain from the expressly urging to vote for or against a particular candidate. Recent experience has shown that such speech may effectively advance the prospects of one candidate over another, even though it refrains from express advocacy of the candidate.

I applaud my colleagues for their ingenuity in seeking to address this avenue by which money, unregulated by our electoral laws, may play a role in our elections.

You can call a dog a hog and it still remains a dog. I think trying to say their amendment and this particular clause in this bill is not violative of the first amendment free speech rights fits the description of trying to call a dog a hog. Still, it remains a dog.

The problem I have with this portion of the legislation is that issue advocacy prior to an election simply cannot be viewed as a loophole in the election laws that we must endeavor to close with appropriate legislation. Viewed through the lens of the first amendment, this issue advocacy is exactly the type of speech that must be accorded the ultimate protection of the first amendment. The Supreme Court has consistently refused to sanction disclosure requirements on issue advocacy, unless the communication in question directly advocates for or against a particular candidate.

Look, issue advocacy generally is used against us Republicans. There is not much doubt about that. That is where the money is. It is used against both from time to time, but really against us. I remember back in 1982 there was tremendous issue advocacy against me by the trade union movement. It was very difficult to put up with some of the ads used against us, both in print and otherwise. But it was a free speech right, and I would fight to my death to defend those rights of free speech.

The Snowe-Jeffords amendment seeks to redraw the line between protected issue advocacy and nonprotected express advocacy of a candidate in order to regulate a larger chunk of public speech prior to an election. Section 201 of the proposed legislation broadens the Federal Election Commission Act's regulatory scope to include any individual or group that expends at least $10,000 a year on electioneering communications. Now that is free speech.

Let's go further. Electioneering communications are defined as any communications in the electorate within 60 days before a general election that ''refers to a clearly identified candidate''—regardless of whether such communication urges a vote for or against that candidate.

The problem with this line-drawing exercise is that the Supreme Court has already done it. In Buckley v. Valeo the Supreme Court defines what types of issue advocacy could, consistent with the Constitution, be made subject to FECA's regulatory requirements. The Court found that only communications that expressly advocated for or against a specific candidate were subject to regulation. The Snowe-Jeffords amendment invades the constitutionally protected territory of pure issue advocacy. In fact, that invasion is the sole purpose of the provision.

It may well be true that third parties are, in fact, able to influence the electorate for or against the candidate by running independent issue advertisements, uncoordinated with a candidate's campaign, in the weeks leading up to the election. That phenomenon does not manifest a flaw in the regulatory scheme established by our current campaign finance laws. For better or for worse, that phenomenon manifests the free interchange of ideas in an open society. Such issue advocacy is free speech, protected by the first amendment, and accordingly, the McCain-Feingold legislation is unconstitutional.

In Snowe-Jeffords, those provisions are fatally overinclusive. They try to sweep away our first amendment political speech. The Supreme Court has been more than clear on this. What the authors are attempting to do is understandable, it is well intentioned, but unfortunately it is unconstitutional. That is one reason I have to stand here today and speak out for the amendment of the distinguished Senator from Ohio.

I believe he is right in his motion to strike. I believe he is right. I believe we ought to support him, and I hope our colleagues will.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, on behalf of the opponents of this legislation, I yield 20 minutes to the Senator from North Carolina, 20 minutes to the Senator from Maine, and 10 minutes to the Senator from Minnesota. We have 50 minutes left. Whatever time is left we will yield back.

I recognize my friend from Ohio is controlling the time on the other side. After Senator EDWARDS, I understand it will be his time to allocate. That is the only time we have requested tonight. That is how we will allocate our time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. I thank the Chair.

Mr. President, we talked at great length in this debate about the need to

return this democracy to the voters and to remove the influence of big money or the appearance of influence of big money.

Tonight I want to talk about two things: First, the two critical provisions of the McCain-Feingold bill; and, second, I want to speak in opposition to the DeWine amendment.

As most people who follow this debate know, the two most critical provisions of this bill are the ban on soft money and the Snowe-Jeffords provision. I first want to speak to the constitutionality of the ban on soft money.

There has been some suggestion during the course of this debate that there is a serious question about constitutionality. In fact, there is no serious question about that. The U.S. Supreme Court in the Buckley case said that in order for the Congress to regulate these sorts of contributions, the only constitutional test that must be met is a finding of a compelling State interest.

In the Buckley case, the U.S. Supreme Court went on to find, in fact, that preventing the actuality or appearance of corruption constitutes a compelling State interest. The language of the Court is:

> Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires the opportunity of abuse inherent in the process of raising large monetary contributions be eliminated.

What the U.S. Supreme Court held in Buckley was in order to regulate these soft money contributions, there must first be a compelling State interest. They then went on to find that, in fact, there was a compelling State interest created by the appearance of impropriety associated with raising these large monetary contributions.

The Buckley case has already decided the question of whether a ban on soft money contributions is, in fact, constitutional. The U.S. Supreme Court has held that, in fact, that ban is constitutional and there is no serious or legitimate question about the constitutionality of the soft money ban.

Now I want to move to the Snowe-Jeffords provision. There has been some suggestion, including by my friend from Ohio in offering his amendment, that there are very serious questions raised by the Snowe-Jeffords provision of the McCain-Feingold bill. I will first summarize what Snowe-Jeffords does.

Snowe-Jeffords bans for the 60-day period prior to a general election or a 30-day period prior to a primary election broadcast television ads by unions or corporations paid for out of general treasury funds. It also contains certain disclosure provisions for other entities who may want to run such ads.

The suggestion is made that under the criteria established by the U.S. Supreme Court in Buckley, Snowe-Jeffords does not meet constitutional muster. In fact, it is very clear if you look at the language of the U.S. Supreme Court in Buckley and if you look at the cases that come after Buckley, Snowe-Jeffords does exactly what the U.S. Supreme Court in Buckley required in order to meet the test of constitutionality. First I will talk about that test.

The U.S. Supreme Court has established four requirements in order for the Snowe-Jeffords provision to be found to be constitutional.

The first of those requirements is that it cannot be vague. The second is that it must serve a compelling State interest. The third, it must be narrowly tailored to serve that interest. The fourth, it cannot be substantially overbroad.

The Court, in reaching that conclusion, first recognized that the first amendment in the case of electioneering—which is what we are talking about, campaign ads—is not absolute. There are certain circumstances where first amendment rights can be restricted, but only if these tests are met.

The first question, ''cannot be vague.'' The Snowe-Jeffords provision is by any measure, a clear, easy-to-identify, bright-line test. It requires that the ad be within the 60 days before the general election or within 30 days of the primary election; second, that it contain the likeness of a candidate or the name of the candidate; and third, that it be a broadcast television ad.

No one reading that definition could have any misunderstanding. It is specific. It is clear. It is a bright-line test. By any measure, it is not vague. It would meet the first test established by the U.S. Supreme Court in Buckley.

Second, it ''must serve a compelling State interest.'' Just as in the case of the soft money ban, the U.S. Supreme Court has already held that avoiding the appearance of impropriety is, in fact, a compelling State interest. The Court has already held that the reason for the Snowe-Jeffords provision is a compelling State interest. So that test is easily and clearly met by the language of the Court in Buckley v. Valeo.

The third, it ''must be narrowly tailored to serve that interest.'' First of all, why did Senators SNOWE and JEFFORDS offer this provision as part of McCain-Feingold? They offered it because in order to avoid legitimate campaign election laws in this country, what has been occurring is people have been broadcasting what has been described as issue ads as opposed to campaign ads. Now there is a ban, of course, on the broadcasting of campaign ads with General Treasury funds, so instead they call these ads issue ads, not campaign ads, in an effort to avoid that legitimate legal restriction.

In fact, what we know both empirically and from our own experience, many of these so-called issue ads—not many, the vast majority—of these so-called issue ads are campaign ads, particularly when they fall within that 60-day period.

Let me stop on this test for just a moment and give a couple of pieces of evidence. First, the empirical studies show in the year 2000 election, 1 percent of the ads that fall within the test of Snowe-Jeffords—that is, within 60 days of the general election, mention the name or show the likeness of the candidate, broadcast television ads—1 percent constituted legitimate issue ads; 99 percent constituted campaign ads. We know what our gut would tell us, anyway. We know from our own experience from watching these television ads, and voters would know from their own experience, that when they see these ads on television, in fact, they are campaign ads. They are not issue ads. They are advocating for the election or defeat of a particular candidate, not for some particular issue.

We now know empirically in the case of the 2000 election, 99 percent of those ads covered by Snowe-Jeffords are campaign ads and not issue ads. They are sham issue ads. They are a fraud under the campaign election laws that exist in this country.

Snowe-Jeffords is trying to eliminate that fraud, eliminate that sham. What we now know, the ads covered by Snowe-Jeffords, 99 percent of those ads are not issue ads but are campaign ads.

I have one or two examples. This is an ad run in a congressional election in 1998:

> Announcer: The Daily reports criminals are being set free in our neighborhoods.
>
> In May, Congressman X voted to allow judges to let violent criminals out of jail, rapists, drug dealers, and even murderers.
>
> X's record on drugs is even worse. X voted to reduce penalties for crack cocaine. And in April, X voted to use your tax dollars to give free needles to illegal drug users.
>
> Call X. Tell him he's wrong. Dangerous criminals belong in jail.

This doesn't use the language used as illustrative by the U.S. Supreme Court in Buckley. It doesn't say ''vote for;'' it doesn't say ''elect;'' it says ''call.'' But any rational person, including all the people who watched this ad on television, know that this ad is aimed at defeating Congressman X in the campaign. That is exactly what it is about.

That is what was demonstrated in my chart, 99 percent of the ads that fall within the test of Snowe-Jeffords are ads just like this. They are pure campaign ads, plain and simple. These ads are being paid for by contributions that otherwise would violate the legitimate election laws of this country.

What we are trying to do in Snowe-Jeffords, we have a very narrowly tailored provision that catches ads that are clearly campaign ads. We now know that 99 percent of those ads that fall within Snowe-Jeffords are campaign ads, plain and simple; not issue ads.

So what conclusion do we draw from this? If 99 percent of the ads are campaign ads, if, in fact, 99 percent of the ads are like the one I have just shown as illustrative, they ''must be narrowly tailored'' to pass constitutional muster.

It is not vague, a clear, bright-line test, we have compelling State interest, and now we know this provision is narrowly tailored, and that goes hand in glove, by the way, with the fourth provision, which means it ''cannot be substantially overbroad.''

The Court recognized that any time you have a bright-line test that is not vague, you are, by definition, going to catch some stray advertisements that are not intended to be included. They don't just require that there be no overbreadth. There has to be substantial overbreadth in order to be unconstitutional.

What we now know empirically, 99 percent of the ads that meet Snowe-Jeffords are exactly what are intended to be targeted by Snowe-Jeffords. The empirical evidence clearly supports the notion that Snowe-Jeffords is not substantially overbroad, on top of the fact that the provisions of the bill itself are not substantially overbroad. They are narrowly tailored. They do exactly what the U.S. Supreme Court has required.

I suggest that, in fact, Senators SNOWE and JEFFORDS have done a terrific job of meeting the constitutional test because they have made the provision for bright line, they have made it clear it is not vague, and at the same time it is sufficiently narrow to meet the constitutional requirements of Buckley v. Valeo.

What we now know and can see by looking at the constitutional requirements is that Snowe-Jeffords meets all those requirements. The U.S. Supreme Court has established these requirements, has defined what they mean, and Snowe-Jeffords, we know, meets those requirements. The empirical evidence shows it is not overly broad, it is not substantially overbroad, that it reaches very few ads that are, in fact, issue ads.

One argument made is that Buckley v. Valeo uses a test in order for an ad to be a campaign ad, as opposed to an issue ad: ''Vote for,'' ''elect,'' ''support,'' ''cast your ballot for.'' The people who are making that argument are not reading the U.S. Supreme Court opinion. Because what the Court said was, in order to make the existing election laws—as of the time of this opinion—constitutional, we are going to establish a test since Congress did not do it. They go on and invite us to do it, to establish the test. Instead of saying ''this is language that is required,'' they say:

> This construction would restrict the application of section 608 . . . to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect'. . . .

It is obvious from the ''such as'' language that the Court by no means intended this list to be exhaustive. The Court fully recognized that given the imagination of campaign managers and people who prepare these ads, that they could not even begin to do an exhaustive list. This list is nothing but illustrative, never intended to be anything but illustrative.

For those who come to the floor and say, wait a minute, Snowe-Jeffords doesn't use the magic language, doesn't use ''vote for,'' doesn't use ''elect''—what the U.S. Supreme Court made clear in their case was these are nothing but illustrations of what changes an ad from an issue ad to a campaign ad.

Sure, if they say ''vote for'' and ''elect'' they become a campaign ad, but as we have shown from the illustration a few moments ago, it is just as simple to have a pure campaign ad that never says ''vote for,'' that never says ''elect,'' that simply says: Call Congressman so-and-so, call Senator so-and-so. But any rational person looking at the ad would know it was calling for the election or defeat of a particular candidate and it was nothing, on its face, but a pure campaign ad.

The point is, it is not a legitimate argument that because Snowe-Jeffords does not use these magic words—the language I have heard during the course of the debate—it cannot pass constitutional muster.

The Supreme Court established four tests in Buckley v. Valeo. The Supreme Court, in fact, invited us, the Congress, to decide what language ought to be used to determine whether ads, in fact, are prohibited or not prohibited. They have left it to us to define what ads are prohibited.

The only thing they require in order to do that is that we meet the four tests they established, which we talked about before. Snowe-Jeffords clearly meets all those tests. It is not vague. It is a clear, easy to understand bright-line test. The U.S. Supreme Court already said what we are attempting to do serves a compelling State interest, it is narrowly tailored—60 days before a general election, 30 days before a primary, likeness or name of the candidate, broadcast ads. And it is not substantially overbroad. As we have already established in the last election, 99 percent of the ads that fall within the definition of Snowe-Jeffords are, in fact, campaign ads and not issue ads.

If you look carefully at the U.S. Supreme Court opinion in Buckley, and if you look at the tests that have been established by the U.S. Supreme Court, first of all, the soft money ban of McCain-Feingold is, on its face, constitutional. There is not even a legitimate argument that it is not constitutional.

Second, the Snowe-Jeffords provision of the McCain-Feingold bill, which bans broadcast ads during this defined period, paid for out of union or corporation treasury funds, also clearly meets all the constitutional tests established by the Court in Buckley v. Valeo. It is a critical component of the McCain-Feingold bill because without it we are going to continue to see these sham issue ads run solely for campaign purposes being paid for by funds that are not legitimate and are not legal.

The only way we can bring this thing to conclusion is to not only do what we have already done during this debate, which is pass the ban on soft money; but to, second, pass the Snowe-Jeffords provision. Because, number one, it is constitutional and, number two, it is absolutely critical to going about reestablishing the public faith in our campaigns and the public faith in our election system. Because not only are people worried about the flow of money, they are worried about what happens when they turn their television sets on in the 30 or 60 days before an election. They are sitting there watching television with their kids and what do they see? They see these nasty, personal attacks, in a huge percentage of the cases being paid for as issue ads, out of funds that are not intended to be used for that purpose.

That is what Snowe-Jeffords is intended to stop. Snowe-Jeffords is clearly constitutional. We should defeat the DeWine amendment as a result.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first of all, let me thank my colleague from North Carolina for his excellent dissertation. I just loved it when he was going through these ads. I want to make it real clear that for all of these different groups and organizations—I don't want to keep my colleague from North Carolina—on the floor, but I know he will agree with this very important distinction—that all of these groups and organizations, whether they are left, right, center, lean Democratic, lean Republican, you name it, they can run all the ads in the world they want and they can finance those ads with soft money; in other words, money they get in contributions of hundreds of thousands of dollars, and it is absolutely fine as long as the focus is on the issue. As long as those are genuine issue ads and it is not electioneering, they have all of the freedom in the world to do that—period. No question about it.

Second, if they want to do the electioneering and they want to do these sorts of ads where you say ''call' as opposed to ''vote against candidate x,'' you bash the candidate, whatever party—they can run all the ads they want and they can have all of the freedom of speech in the world. The only thing is, they have to finance it out of hard money. That is all. They cannot pretend that these are ''issue ads'' when they are sham issue ads and we all know it is electioneering. That is the point. But they can do it. They just have to raise their money under the campaign limits that deal with hard money. That is the whole point of some of the amendments to this bill.

From my own part, one more time—and the more I talk to people, I think the people agree this is a very important strengthening amendment—what we want to make sure of is when we do the prohibition on soft money to the

parties, all of a sudden that money, again, like pushing Jell-O, doesn't just shift to these sham issue ads where a variety of existing groups and organizations, much less the proliferation of all the new groups and organizations, will take advantage of a loophole and just pour all of their soft money into these sham issue ads which are really electioneering. In that case, what will we have accomplished if we have, roughly speaking, just as much soft money spent but it is just going to be spent in a different way, unaccountable big dollars?

That is what the amendment I introduced the other night was all about.

I only came to the floor because I want to make sure the RECORD is clear. My colleague from Maine was gracious enough to give me a little bit of time. Let me make three quick points.

Point No. 1. The amendment I introduced the other night—since this amendment has been mentioned several times by my colleague—uses the exact same sham issue test ad, with some additional targeting, as the Snowe-Jeffords language in the bill which is constitutional. In fact, actually the targeting language I use makes the amendment more likely to survive any constitutional challenge.

Point No. 2, the Snowe-Jeffords test is a bright-line test, as my colleague from North Carolina pointed out. It is perfectly obvious on its face, whether an ad falls under this definition. This means there will be no ''chilling effect'' on protected speech, which was a concern raised by the Supreme Court in the Buckley decision because every group, every organization would be uncertain if an ad they intended to run would be covered or not. We make sure everybody would be certain.

Point No. 3, the test is not overly broad. A comprehensive study conducted by the Brennan Center, which did a whole lot of work on campaign finance ads during the 1998 election, found that only two genuine issue ads, out of hundreds run, would have been inappropriately defined as a sham issue ad.

This is a really important one for the RECORD.

On February 20, 1998, a letter signed by 20 constitutional scholars, including the former director of the ACLU, which analyzed the Snowe-Jeffords provision on electioneering communications, argued that even though the provision was written to exempt certain organizations from the ban on electioneering communication, such omission was not constitutionally necessary.

I quote from these scholars, including a former director of the ACLU:

> The careful crafting of the Snowe-Jeffords amendment stands in stark contrast to the clumsy and sweeping prohibition that Congress originally drafted. Congress could, if it wished, apply the basic rules that currently govern electioneering to all spending that falls within this more realistic definition of electioneering. Congress could, for example, declare that only individuals, PAC's and the most grassroots of nonprofit corporations could engage in electioneering that falls within the broad definition. It could impose fundraising restrictions prohibiting individuals from pooling large contributions towards such electioneering.

Fifth point: If you believe that the amendment that passed the other night that I introduced covers certain groups unconstitutionally—if that is what you believe—then you must also believe that the current Shays-Meehan bill—the version passed by the House of Representatives—and the 1997 version, and all previous versions of the McCain-Feingold bill are also unconstitutional because they cover the same groups.

Point No. 6: In September 1999, Don Simon, then-executive vice president and general counsel of Common Cause, argued in a memo to all House Members that the Shays-Meehan bill is fully constitutional. That is exactly the amendment we passed the other night on the floor of the Senate.

Finally, in the event of constitutional problems, the amendment passed the other night is fully severable.

I make five arguments as to why this is a very different question.

First, this amendment, and indeed the Snowe-Jeffords provision already in the bill, only covers broadcast communications. It does not cover print communications like the one at issue in Massachusetts Citizens for Life. Indeed, the group argued that the flyer should have been protected as a news ''editorial.'' Snowe-Jeffords specifically exempts editorial communications.

Second, the court based its decision in part on the logic that regulation of election related communications was overly burdensome to small, grass roots, nonprofit organizations and so would have a chilling effect on speech. But the Snowe-Jeffords standard that the amendment would apply has a high threshold that must be met before a communication is covered. A group would have to spend $10,000 on broadcast ads that mention a federal candidate 60 days before an election before this provision would kick in. This meets the Court's requirement in the case that minor communications be protected.

Third, the federal law that the court objected to was extremely broad and the Court specifically cited that fact as one of reasons it reached the decision it did, saying ''Regulation that would produce such a result demands far more precision that [current law] provides.'' This amendment provides that precision. The Snowe-Jeffords language is very narrowly targeted and has a very high threshold before it applies, which further protects amateur, unsophisticated, or extremely limited communications.

Fourth, the Court actually argued that the election communications of non-profit corporations—such as the ones covered by amendment—could be regulated once it reached a certain level. In fact, the Court held that, quote:

> . . . should MCFL's independent spending so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee . . . As such, it would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.

Yet since the decision, such groups have actually operated outside the law with impunity. Take for example, the organization ''Republicans for Clean Air.''

Despite it's innocuous name, this was an organization created for the sole purpose of promoting the candidacy of George W. Bush during the Republican primary during the last election. Another example is the Club for Growth. This was an outfit that ran attack ads against moderate Republican congressional candidates in Republican congressional primaries. Both groups, which would be covered by my amendment—but not the current Snowe-Jeffords provision—could clearly be banned from running these sham issue ads with their treasury funds under the Massachusetts Citizens for Life decision.

Fifth, the court's decision was based on a premise that may have been true in 1986, but certainly is not the case today: that non-profit groups such as the one at issue in the decision did not play a major rule in federal elections. In fact, the court held that: ''the FEC maintains that the inapplicability of [current law] to MCFL would open the door to massive undisclosed spending by similar entities . . . We see no such danger.'' Today, it is clear that the FEC had it exactly right and the Court had it exactly wrong.

In fact, the Campaign Finance Institute at George Washington University in a February 2001 report found this to be the case and stated quote: ''These undisclosed interest group communications are a major force in U.S. not little oddities or blips on a screen.'' Perhaps in 1986 it was a ''blip on the screen'' but today we are talking about tens of millions of dollars just in these sham issue adds. These groups have become major players in our elections but the law does not hold them accountable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I want to conclude the debate on the motion to strike that has been offered by my colleague from Ohio by making several points on the Snowe-Jeffords provision. We will conclude the debate tomorrow before the vote. But I think it is critical for my colleagues to understand that the essence of this provision, as the Senator from North Carolina so eloquently stated, the legal rationale for the underpinnings of this amendment, was drafted with an abundance of caution. It was carefully crafted to specifically address the issues that were raised in the Buckley decision in 1976 with respect to the restrictions

being either too vague or too broad, and so they in effect would not have a chilling effect on the public's right to free speech.

Since that time, as I indicated earlier, in the 25 years or 26 years that have ensued, there has been no other major campaign finance law that has been passed by this Congress or that has come before the Supreme Court because we have not acted. We have not taken any action on campaign finance reform or changes in our campaign finance laws since that time.

We have seen the evolution and the eruption of the so-called sham issue ads that supposedly were operating under the guise of being advocacy ads. But in reality, as we all well know, with the studies that have been done recently on the influence and impact they are having on the election because they mention the candidates by name, they come into that very narrow window of 60 days before an election.

That is not just happenstance; it is because the election is occurring. They design these ads to mention a candidate and to avoid using those magic words ''for or against'' but knowing full well that it will have an effect on the intended audience on a candidate's election.

We are very definitive. We are very specific in the Snowe-Jeffords provision in the McCain-Feingold legislation that is before us. It has to identify. It has to mention a candidate. The ad has to run 60 days before a general election and 30 days before a primary. The ad has to run in a candidate's State or district.

Those criteria are very specific, and therefore anybody who has the intention of running those ads will know exactly whether or not they are treading constitutional grounds. That is why 70 constitutional scholars and experts signed a letter in support of these provisions, because they know they don't run afoul of constitutional limitations in the first amendment because it is very specifically drafted to address those issues.

Fundamentally, it really comes down to whether or not we are truly interested in disclosure. The Supreme Court said we have a right to disclosure. It is in the public interest. It is a compelling public interest for disclosure. The Supreme Court has said clearly in a number of cases for constitutional purposes that electioneering is different from other speeches. That was handed down as one decision by the Supreme Court in 1986.

Of course, in the Buckley case, it said Congress has the power to enact campaign financing laws that extend electioneering through a variety of ways, even though spending in other forms of political speech is entitled to absolute first amendment protection. It said, as an example, to ''vote for'' or ''vote against'' are the magic words but that it was not all-inclusive.

The Supreme Court could not possibly have foreseen the evolution of the kinds of ads that are pervading the election process today. They are escaping. They are coming in under the radar of disclosure.

We are saying those major donors of $1,000 or more—that is five times the requirement for disclosure that we have to provide as candidates under Federal election laws—but we are saying five times higher before the trigger for disclosure occurs to organizations that run ads in that 60-day window, in the 30-day window in the primary, that mention a candidate because it is clear that the intent is designed to influence the outcome of an election.

In Buckley, it said Congress has broader latitude to require disclosure of election-related spending than it does to restrict such spending. Disclosure rules, according to the Court, are the least restrictive means of curbing the evils of campaign ignorance and corruption.

Congress banned corporate union contributions as upheld in United States v. UAW in 1957, reaffirmed, as I said earlier, in the Austin v. Michigan Chamber of Commerce decision in 1990. It is all weighted in sound legal precedent. That is what the Snowe-Jeffords provision is all about.

I really do think we have to come to grips with the realities of what is occurring in our elections when 99 percent —99 percent is almost as high as it gets—99 percent of all of the ads that are aired during that period of time before the election mention candidates. And their intent is clear, because all the focus groups that responded to the Snowe-Jeffords provision used that as an analysis and viewed these ads, and identified these ads as being the most influential, negative, and intended to effect an outcome. So that is essentially what we are talking about.

I think the vote tomorrow to strike this provision is basically coming down to whether or not we want fundamental reform, if we are willing to take back the process, if we are willing to take back the process as candidates.

I want to control my own campaign. As I said in my previous statement, in 1978 when I first ran for the House of Representatives, these phenomena were virtually unknown. It was rare to even have an independent expenditure—and that is another story—under Federal election laws. That is a different thing. But we did not even have that.

These elections should be between and among the candidates themselves. Do we really think it is in our interest, in the public's interest, to have organizations of whom we know little, if anything, to influence, to impact, our elections—In fact, to spend more than the candidates themselves in some of these elections? Sometimes these organizations spend more than the candidates themselves who are involved in these elections. Are we saying that that is in our public interest?

They hide behind the cloak of anonymity. We do not even know who they are. I have a list here. Some of them we would probably readily identify by name, at least in terms of their interests. But while you do not know most of them, this is a list of 100 organizations. And this is not all of them. This is not all inclusive. But you have the Americans for Hope, Growth & Opportunity, Americans for Job Security, Coalition to Protect Americans Now, Coalition to Protect America's Health Care, Committee for Good Common Sense. Those all sound very appropriate, meritorious, but who are they? Who are they?

We are not saying they can't run ads. They can run ads all year long. They can do whatever they want in that sense. But what we are saying is, when they come into that narrow window, we have the right to know who are their major contributors who are financing these ads close to an election.

There are no guaranteed rights to anonymity when it comes to campaigning. Even the Supreme Court has said it is in our public interest to have disclosure. In fact, the Court has said time and time again, disclosure is in the public's interest because it gives details as to the nature and source of the information they are getting. That is why 70 constitutional scholars have endorsed the Snowe-Jeffords provision.

Mr. President, I ask unanimous consent to have this letter from the Brennan Center for Justice printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW,
New York, NY, March 12, 2001.

Senator JOHN MCCAIN,
Senator RUSSELL FEINGOLD,
U.S. Senate, Washington, DC.

DEAR SENATORS MCCAIN AND FEINGOLD: We are scholars who have studied and written about the First Amendment to the United States Constitution. We submit this letter to respond to a series of public challenges to two components of S. 27, the McCain-Feingold Bill. Critics have argued that it is unconstitutional to close the so-called ''soft money loophole'' by placing restrictions on the source and amount of campaign contributions to political parties. Critics have also argued that it is unconstitutional to require disclosure of campaign ads sponsored by advocacy groups unless the ads contain explicit words of advocacy, such as ''vote for'' or ''vote against.'' We reject both of those suggestions.

As constitutional scholars, we are deeply committed to the principles underlying the First Amendment and believe strongly in preserving free speech and association in our society, especially in the realm of politics. We are not all of the same mind on how best to address the problems of money and politics. However, we all agree that the nation's current campaign finance laws are on the verge of being rendered irrelevant, and that the Constitution does not erect an insurmountable hurdle to Congressional efforts to adopt reasonable campaign finance laws aimed at increasing disclosure for electioneering ads, restoring the integrity of the long-standing ban on corporate and union political expenditures, and reducing the appearance of corruption that flows from ''soft money'' donations to political parties.

The problems of corruption and the appearance of corruption that the McCain-Feingold Bill attempts to address are ones that inhere in any system that permits large campaign contributions to flow to elected officials and the political parties. These problems have been brought to the public's attention in a rather stark manner through the recent presidential pardon issued to fugitive financier Marc Rich. Regardless of underlying merits of that presidential decision, the public perception that flows from the publicly-reported facts is that large political contributors receive both preferred access to and preferential treatment from our elected government officials. These perceptions, regardless of their truth or falsity in any individual case, are ultimately very corrosive to our democratic institutions.

I. LIMITS ON ''SOFT MONEY'' CONTRIBUTIONS TO POLITICAL PARTIES FROM CORPORATIONS, LABOR UNIONS, AND WEALTHY CONTRIBUTORS ARE CONSTITUTIONAL

To prevent corruption and the appearance of corruption, federal law imposes limits on the source and amount of money that can be given to candidates and political parties ''in connection with'' federal elections. The money raised under these strictures is commonly referred to as ''hard money.'' Since 1907, federal law has prohibited corporations from making hard money contributions to candidates or political parties. See 2 U.S.C 441b(a) (current codification). In 1947, that ban was extended to prohibit union contributions as well. Id. Individuals, too, are subject to restrictions in their giving of money to influence federal elections. The Federal Election Campaign Act (''FECA'') limits an individual's contributions to (1) $1,000 per election to a federal candidate; (2) $20,000 per year to national political party committees; and (3) $5,000 per year to any other political committee, such as a PAC or a state political party committee. Id. §441a(a)(1). Individuals are also subject to a $25,000 annual limit on the total of all such contributions. Id. §441a(a)(3).

The soft money loophole was created not by Congress, but by a Federal Election Commission (''FEC'') ruling in 1978 that opened a seemingly modest door to allow non-regulated contributions to political parties, so long as the money was used for grassroots campaign activity, such as registering voters and get-out-the-vote efforts. These unregulated contributions are known as ''soft money'' to distinguish them from the hard money raised under FECA's strict limits. In the years since the FEC's ruling, this modest opening has turned into an enormous loophole that threatens the integrity of the regulatory system. In the recent presidential election, soft money contributions soared to the unprecedented figure of $487 million, which represented an 85 percent increase over the previous presidential election cycle (1995–96). It is not merely the total amount of soft money contributions that raises concerns, but the size of the contributions as well, with donors being asked to give amounts of $100,000, $250,000, or more to gain preferred access to federal officials. Moreover, the soft money raised is, for the most part, not being spent to bolster party grassroots organizing. Rather, the funds are often solicited by federal candidates and used for media advertising clearly intended to influence federal elections. In sum, soft money has become an end run around the campaign contribution limits, creating a corrupt system in which monied interests appear to buy access to, and inappropriate influence with, elected officials.

The McCain-Feingold bill would ban soft money contributions to national political parties by requiring that all contributions to national parties be subject to FECA's hard money restrictions. The bill also would bar federal officeholders and candidates for such offices from soliciting, receiving, or spending soft money. Additionally, state parties that are permitted under state law to accept unregulated contributions from corporations, labor unions, and wealthy individuals would be prohibited from spending that money on activities relating to federal elections, including advertisements that support or oppose a federal candidate.

We believe that such restrictions are constitutional. The soft money loophole has raised the specter of corruption stemming from large contributions (and those from prohibited sources) that led Congress to enact the federal contribution limits in the first place. In Buckley v. Valeo the Supreme Court held that the government has a compelling interest in combating the appearance and reality of corruption, an interest that justifies restricting large campaign contributions in federal elections. See 424 U.S. 1, 23–29 (1976). Significantly, the Court upheld the $25,000 annual limit on an individual's total contributions in connection with federal elections. See id. at 26–29, 38. In later cases, the Court rejected the argument that corporations have a right to use their general treasury funds to influence elections. See, e.g., Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). Under Buckley and its progeny, Congress clearly possesses power to close the soft money loophole by restricting the source and size of contributions to political parties, just as it does for contributions to candidates, for use in connection with federal elections.

Moreover, Congress has the power to regulate the source of the money used for expenditures by state and local parties during federal election years when such expenditures are used to influence federal elections. The power of Congress to regulate federal elections to prevent fraud and corruption includes the power to regulate conduct which, although directed at state or local elections, also has an impact on federal races. During a federal election year, a state or local political party's voter registration or get-out-the-vote drive will have an effect on federal elections. Accordingly, Congress may require that during a federal election year, state and local parties' expenditures for such activities be made from funds raised in compliance with FECA so as not to undermine the limits therein.

Any suggestion that the Supreme Court's decision in Colorado Republican Federal Campaign Committee v. FEC, 1518 U.S. 604 (1996), casts doubt on the constitutionality of a soft money ban is flatly wrong. Colorado Republican did not address the constitutionality of banning soft money contributions, but rather the expenditures by political parties of hard money, that is, money raised in accordance with FECA's limit. Indeed, the Court noted that it ''could understand how Congress, were it to conclude that the potential for evasion of the individual contribution limits was a serious matter, might decide to change the statute's limitations on contributions to political parties.'' Id. at 617.

In fact, the most relevant Supreme Court decision is not Colorado Republican, but Austin v. Michigan Chamber of Commerce, in which the Supreme Court held that corporations can be walled off from the electoral process by forbidding both contributions and independent expenditures from general corporate treasuries. 494 U.S. at 657–61. Surely, the law cannot be that Congress has the power to prevent corporations from giving money directly to a candidate, or from expending money on behalf of a candidate, but lacks the power to prevent them from pouring unlimited funds into a candidate's political party in order to buy preferred access to him after the election. See also Nixon v. Shrink Missouri Govt. PAC, 120 S. Ct. 897 (2000) (reaffirming Buckley's holding that legislatures may enact limits on large campaign contributions to prevent corruption and the appearance of corruption).

Accordingly, closing the loophole for soft money contributions is in line with the long-standing and constitutional ban on corporate and union contributions in federal elections and with limits on the size of individuals' contributions to amounts that are not corrupting.

II. CONGRESS MAY REQUIRE DISCLOSURE OF ELECTIONEERING COMMUNICATIONS, AND IT MAY REQUIRE CORPORATIONS AND LABOR UNIONS TO FUND ELECTIONEERING COMMUNICATIONS WITH MONEY RAISED THROUGH POLITICAL ACTION COMMITTEES

The current version of the McCain-Feingold Bill adopts the Snowe-Jeffords Amendment, which addresses the problem of thinly-disguised electioneering ads that masquerade as ''issue ads.'' Snowe-Jeffords defines the term ''electioneering communications'' to include radio or television ads that refer to clearly identified candidates and are broadcast within 60 days of a general election or 30 days of a primary. A group that makes electioneering communications totaling $10,000 or more in a calendar year must disclose its identity, the cost of the communication, and the names and addresses of all its donors of $1,000 or more. If the group has a segregated fund that it uses to pay for electioneering communications, then only donors to that fund must be disclosed. Additionally, corporations and labor unions are barred from using their general treasury funds to pay for electioneering communications. Instead, they must fund electioneering communications through their political action committees.

The Supreme Court has made clear that, for constitutional purposes, electioneering is different from other speech. See FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 249 (1986) (''MCFL''). Congress has the power to enact campaign finance laws that constrain the spending of money on electioneering in a variety of ways, even though spending on other forms of political speech is entitled to absolute First Amendment protection. See Buckley v. Valeo, 424 U.S. 1 (1976). Congress is permitted to demand that the sponsor of a campaign and disclose the amount spent on the message and the sources of the funds. And Congress may prohibit corporations and labor unions from spending money on campaign ads. This is black letter constitutional law about which there can be no serious dispute.

There are, of course, limits to Congress's power to regulate election-related spending. But there are two contexts in which the Supreme Court has granted Congress freer reign to regulate. First, Congress has broader latitude to require disclosure of election-related spending than it does to restrict such spending. See id. at 67–68. In Buckley, the Court declared that the governmental interests that justify disclosure of election-related spending are considerably broader and more powerful than those justifying prohibitions or restrictions on election-related speeding. Disclosure rules, the Court opined, in contrast to spending restrictions or contribution limits, enhance the information available to the voting public. Plus, the burdens on free speech rights are far less significant when Congress requires disclosure of a particular type of spending than when it prohibits the spending outright or limits the funds that support the speech. Disclosure rules, according to the Court, are ''the least

restrictive means of curbing the evils of campaign ignorance and corruption.'' Id. at 68. Thus, even if certain political advertisements cannot be prohibited or otherwise regulated, the speaker might still be required to disclose the funding sources for those ads if the governmental justification is sufficiently strong.

Second, Congress has a long record, which has been sustained by the Supreme Court, of imposing more onerous spending restrictions on corporations and labor unions than on individuals, political action committees, and associations. Congress banned corporate and union contributions in order ''to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital.'' United States v. UAW, 352 U.S. 567, 585 (1957). As recently as 1990, the Court reaffirmed this rational. See Austin v. Michigan Chamber of Commerce, 491 U.S. 652 (1990); FEC v. National Right to Work Committee, 459 U.S. 197 (1982). The Court emphasized that it is constitutional for the state to limit the electoral participation of corporations because ''[s]tate law grants [them] special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation of and distribution of assets.'' Austin, 491 U.S. at 658–59. Having provided these advantages to corporation, particularly business corporations, the state has no obligation to ''permit them to use 'resources amassed in the economic marketplace' to obtain 'an unfair advantage in the political marketplace.''' (quoting MCFL, 479 U.S. at 257). Snowe-Jeffords builds upon these bedrock principles, extending current regulation cautiously and only in the areas in which the First Amendment protection is at its lowest ebb.

Contrary to the suggestion of some of the critics of Snowe-Jeffords, the Supreme Court in Buckley did not promulgate a list of certain ''magic words'' that are regulable as ''electioneering'' and place all other communications beyond the reach of campaign finance law. In Buckley, the Supreme Court reviewed the constitutionality of a specific piece of legislation—FECA. One section of FBCA imposed a $1,000 limit on expenditures ''relative to a clearly identified candidate,'' and another section imposed reporting requirements for independent expenditures of over $100 ''for the purpose of influencing'' a federal election. The Court concluded that these specific provisions ran afoul of two constitutional doctrines—vagueness and overbreadth—that pervade First Amendment jurisprudence.

The vagueness doctrine demands clear definitions. Before the government punishes someone—especially for speech—it must articulate with sufficient clarity what conduct is legal and what is illegal. A vague definition of electioneering might ''chill'' some political speakers who, although they desire to engage in discussions of political issues, may fear that their speech could be punished.

Even if a regulation is articulated with great clarity, it may still be struck as overbroad. A restriction that covers regulable speech (and does so clearly) can be struck if it sweeps too broadly and covers a substantial amount of constitutionally protected speech as well. But under the overbreadth doctrine, the provision will be upheld unless its overbreadth is substantial. A challenger cannot topple a statute simply by conjuring up a handful of applications that would yield unconstitutional results.

Given these two doctrines, it is plain why FECA's clumsy provisions troubled the Court. Any communication that so much as mentions a candidate—any time and in any context—could be said to be ''relative to'' the candidate. And it is difficult to predict what might ''influence'' a federal election. The Supreme Court could have simply struck FECA, leaving it to Congress to develop a clearer and more precise definition of electioneering. Instead, the Court intervened by essentially rewriting Congress's handiwork itself. In order to avoid the vagueness and overbreadth problems, the Court interpreted FECA to reach only funds used for communications that ''expressly advocate'' the election or defeat of a clearly identified candidate. In an important footnote, the Court provided some guidance on how to decide whether a communication meets that description. The Court stated that its revision of FECA would limit the reach of the statute ''to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject,''' Buckley, 424 U.S. at 44 n.52.

But the Court did not declare that all legislatures were stuck with these magic words, or words like them, for all time. To the contrary, Congress has the power to enact a statute that defines electioneering in a more nuanced manner, as long as its definition adequately addresses the vagueness and overbreadth concerns expressed by the Court.

Any more restrictive reading of the Supreme Court's opinion would be fundamentally at odds with the rest of the Supreme Court's First Amendment jurisprudence. Countless other contexts—including libel, obscenity, fighting words, and labor elections—call for delicate line drawing between protected speech and speech that may be regulated. In none of these cases has the Court adopted a simplistic bright-line approach. For example, in libel cases, an area of core First Amendment concern, the Court has rejected the simple bright-line approach of imposing liability based on the truth or falsity of the statement published. Instead the Court has prescribed an analysis that examines, among other things, whether the speaker acted with reckless disregard for the truth or falsity of the statement and whether a reasonable reader would perceive the statement as stating actual facts or merely rhetorical hyperbole. Similarly, in the context of union representation elections, employers are permitted to make ''predictions'' about the consequences of unionizing but they may not issue ''threats.'' The courts have developed an extensive jurisprudence to distinguish between the two categories, yet the fact remains that an employer could harbor considerable uncertainty as to whether or not the words he is about to utter are sanctionable. The courts are comfortable with the uncertainty of these tests because they have provided certain concrete guidelines.

In no area of First Amendment jurisprudence has the Court mandated a mechanical test that ignores either the context of the speech at issue or the purpose underlying the regulatory scheme. In no area of First Amendment jurisprudence has the Court held that the only constitutionally permissible test is one that would render the underlying regulatory scheme unenforceable. It is doubtful, therefore, that the Supreme Court in Buckley intended to single out election regulations as requiring a mechanical, formulaic, and utterly unworkable test.

Snowe-Jeffords presents a definition of electioneering carefully crafted to address the Supreme Court's dual concerns regarding vagueness and overbreadth. Because the test for prohibited electioneering is defined with great clarity, it satisfies the Supreme Court's vagueness concerns. Any sponsor of a broadcast will know, with absolute certainty, whether the ad depicts or names a candidate and how many days before an election it is being broadcast. There is little danger that a sponsor would mistakenly censor its own protected speech out of fear of prosecution under such a clear standard.

The prohibition is also narrow enough to satisfy the Supreme Court's overbreadth concerns. Advertisements that name a political candidate and are aired close to election almost invariably are electioneering ads intended to encourage voters to support or oppose the named candidate. This conclusion is supported by a comprehensive academic review conducted of television advertisements in the 1998 federal election cycle. See Buying Time: Television Advertising in the 1998 Congressional Elections (Brennan Center for Justice, 2000). This study examined more than 300,000 airings of some 2,100 separate political commercials that appeared in the nation's 75 largest media markets in 1998. The study found that there were a total of 3,100 airings of only two separate commercials that met the Snowe-Jeffords criteria of naming a specific candidate within 60 days of the general election and that were judged by academic researchers to be true issue advocacy. This, the Snowe-Jeffords general election criteria were shown to have inaccurately captured only 1 percent of the total political commercial airings, and represented an insignificant 0.1 percent of the separate political commercial airings in the 1998 election cycle. This empirical evidence demonstrates that the Snowe-Jeffords criteria are not ''substantially overbroad.'' The careful crafting of Snowe-Jeffords stands in stark contrast to the clumsy and sweeping prohibition that congress originally drafted in FECA.

CONCLUSION

McCain-Feingold is a reasonable approach to restoring the integrity of our federal campaign finance laws. The elimination of soft money will close an unintended loophole that, over the last few election cycles, has rendered the pre-existing federal contribution limits largely irrelevant. Similarly, the incorporation of the Snowe-Jeffords Amendment into the McCain-Feingold Bill is a well-reasoned attempt to define electioneering in a more realistic manner while remaining faithful to First Amendment vagueness and overbreadth concerns. It seeks to provide the public with important information concerning which private groups and individuals are spending substantial sums on electioneering, and it prohibits corporations and labor unions from skirting the ban on using their general treasury funds for the purpose of influencing the outcome of federal elections. While no one can predict with certainty how the courts will finally rule if any of these provisions are challenged in court, we believe that the McCain-Feingold Bill, as currently drafted, is consistent with First Amendment jurisprudence.

Respectfully submitted,

ERWIN CHEMERINSKY,
Sydney M. Irmas Professor of Public Interest, Law, Legal Ethics, and Political Science, University of Southern California.

RONALD DWORKIN,
Quain Professor of Jurisprudence, University College London; Frank H. Sommer Professor of Law, New York University School of Law.

ABNER J. MIKVA,
Visiting Professor, University of Chicago School of Law.

NORMAN ORNSTEIN,
Resident Scholar, American Enterprise Institute.
NORMAN DORSEN,
Stokes Professor of Law, New York University School of Law.
FRANK MICHELMAN,
Robert Walmsey University Professor, Harvard University.
BURT NEUBORNE,
John Norton Pomeroy Professor of Law, New York University School of Law.
DANIEL R. ORTIZ,
John Allan Love Professor of Law & Joseph C. Carter, Jr. Research Professor, University of Virginia School of Law.

(All Institutional Affiliations are for Identification Purposes Only)

Ms. SNOWE. They illustrate exceptionally well the legal validity and rationale for this provision. It charts a very narrow course. That is why they have every confidence it will withstand constitutional scrutiny.

You hear some who say: Oh, no, it will create a loophole. On the other hand, it creates too many restrictions.

Well, which is it? I think we have reached the point in time where we have to stand up and be counted as to whether or not we want to hide behind the guise of anonymity, of organizational anonymity, to shape the direction and influence of these elections. I say that is the wrong direction.

The Annenberg Center did a study. It showed, as I said earlier, $100 million was spent in the final weeks of the campaign. And guess what. They mentioned a candidate by name. They mentioned a candidate by name. That is no coincidence. It had nothing to do with influencing the issue agenda because, as I showed on a chart earlier, what was happening in Congress and what was happening out in the elections was not parallel. The ads run by these organizations tracked the ads run by candidates and had nothing to do, virtually speaking, with what Congress was addressing at that point in time.

So that is why this legislation becomes so important. It is an integral part of the reform that is before us embodied in the McCain-Feingold legislation. It does represent a balanced approach.

Mr. President, I ask unanimous consent to have a statement by persons who have served the American Civil Liberties Union printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF PERSONS WHO HAVE SERVED THE AMERICAN CIVIL LIBERTIES UNION IN LEADERSHIP POSITIONS SUPPORTING THE CONSTITUTIONALITY OF THE MCCAIN-FEINGOLD BILL, MARCH 22, 2001

We have served the American Civil Liberties Union in leadership positions over several decades. Norman Dorsen served as ACLU General Counsel from 1969–76 and as President of the ACLU from 1976–1991. Jack Pemberton and Aryeh Neier served as Executive Directors of the ACLU from 1962–1978. Melvin Wulf, Burt Neuborne, and John Powell served as National Legal Directors of the ACLU from 1962–1992. Charles Morgan, Jr., John Shattuck, and Morton Halperin served as National Legislative Directors of the ACLU from 1972–1992. Together we constitute every living person to have served as ACLU President, ACLU Executive Director, ACLU Legal Director, or ACLU Legislative Director, with the exception of the current leadership.

We have devoted much of our professional lives to the ACLU, and to the protection of free speech. We are proud of our ACLU service, and we continue to support the ACLU's matchless efforts to preserve the Bill of Rights. We have come to believe, however, that the ACLU's opposition to campaign finance reform in general, and the McCain-Feingold Bill in particular, is misplaced. In our opinion, the First Amendment does not forbid content-neutral efforts to place reasonable limits on campaign spending and establish reasonable disclosure rules, such as those contained in the McCain-Feingold Bill.

We believe that the First Amendment is designed to safeguard a functioning and fair democracy. The current system of campaign financing makes a mockery of that ideal by enabling the rich to set the national agenda, and to exercise disproportionate influence over the behavior of public officials.

We recognize that the Supreme Court's 1976 decision in Buckley v. Valeo makes it extremely difficult for Congress to reform the current, disastrous campaign finance system, and we believe that Buckley should be overruled. However, even within the limitations of the Buckley decision, we believe that the campaign finance reform measures contained in the McCain-Feingold Bill are constitutional.

We support McCain-Feingold's elimination of the ''soft money'' loophole, which allows unlimited campaign contributions to political parties and undermines Congress's effort to regulate the size and source of campaign contributions to candidates. There can be little doubt that large ''soft money'' contributions to the political parties can corrupt, and are perceived as corrupting, our government officials.

We also support regulation of the funding of political advertising that is clearly intended to affect the outcome of a specific federal election, but that omits the magic words ''vote for'' or ''vote against.'' The McCain-Feingold Bill treats as electioneering any radio or television ad that names a federal candidate shortly before an election and is targeted to the relevant electorate. It would ban the use of corporate and labor general treasury funds for such ads, and it would require public disclosure of the sources of funding for such ads when purchased by other groups and individuals. We believe that these provisions are narrowly tailored to meet the vagueness and overbreadth concerns expressed by the Supreme Court in Buckley, and thus are constitutional.

Finally, we believe that the current debate over campaign finance reform in the Senate and House of Representatives should center on the important policy questions raised by various efforts at reform. Opponents of reform should not be permitted to hide behind an unjustified constitutional smokescreen.

NORMAN DORSEN.
MORTON HALPERIN.
CHARLES MORGAN, Jr.
ARYEH NEIER.
BURT NEUBORNE.
JACK PEMBERTON.
JOHN POWELL.
JOHN SHATTUCK.
MELVIN WULF.

Ms. SNOWE. Mr. President, every previous president of the ACLU has endorsed this legislation. They uphold it. As we know, they are an organization apt to take either side to preserve the freedom and the right to speak. But they believe this meets the constitutional soundness as crafted in previous decisions by the Supreme Court.

The Supreme Court did not say forever and a day you could never pass any other legislation to address what might develop. As I said, the Court could not possibly foresee 25 years later the emergence and the preponderance of the kind of ads that are clearly overtaking the process.

The time has come, I say to my colleagues in the Senate, to recognize we have to stand up and be counted on this very significant issue. And it comes down to disclosure. It comes down to disclosure. I hope the Senate will stand four-square behind disclosure and sunlight and against the unchecked process of these electioneering ads that are certainly transforming the political landscape in ways that we could not possibly desire or embrace.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, may I inquire of the Chair how much time I have remaining?

The PRESIDING OFFICER. The Senator has 47½ minutes.

Mr. DEWINE. Let me inform the Chair and my colleagues, I do not intend to take that entire time. I am sure the Chair is pleased by that.

I do request of the Chair, though, in case I do get carried away, if the Chair would notify me when I have 10 minutes remaining. I don't expect to get to that point. If the Chair will do that, I would appreciate it.

I have listened to my colleagues from Vermont and Maine, Arizona and North Carolina. I agree with a lot of what they have had to say. I don't like a lot of these ads either. I have the same fear that every incumbent does; that is, that the next time I run there is going to be a group that will come in and spend a whole bunch of money on Ohio TV and tell people what a bad Senator MIKE DEWINE has been. We all live in fear of that. We all live with a lot of money coming in, and we have the fear of very tough ads that use our name, that use our picture, and tell the voters why we are not doing such a good job. We have that fear.

The problem is, the Snowe-Jeffords-Wellstone amendment is unconstitutional. There is the first amendment. Even though we may not like it when people say things about us, that is part of their rights under the first amendment.

I will respond specifically to a couple comments that have been made. My colleague from Maine and before that

my colleague from Minnesota made the statement about former directors of the ACLU. Let me respond to that by referencing a letter from the current ACLU opposing this language, opposing the bill. In part, in referencing this section of the bill, they say:

Simply put, the bill is a recipe for political repression because it egregiously violates longstanding free speech rights.

There is more to the letter, but that is the essence of it.

With the exception of my colleague from Minnesota, everyone who has come to the floor this afternoon and this evening to argue against the DeWine amendment, each one of those individuals, while I have a great deal of respect for them and while they were all very eloquent, each one of them, with the exception of Senator WELLSTONE, voted against the Wellstone amendment. I can't tell my colleagues why in each case, but each one of them did. The fact we must remember, and I ask my colleagues to remember, is we no longer are dealing with Snowe-Jeffords. We now are dealing with Snowe-Jeffords-Wellstone. That is what is in the bill, not the original Snowe-Jeffords.

Ninety percent of the debate we have heard this evening is about Snowe-Jeffords. That is not where we are. I didn't come to the floor to offer an amendment to take out Snowe-Jeffords. It has been changed. It has been fundamentally changed. Members need to think about it.

My friend from North Carolina who voted against the Wellstone amendment said this in his closing statement when he argued why he was going to vote against it:

So the reason Senator FEINGOLD and Senator MCCAIN are opposing this amendment is the same reason that I oppose this amendment. It raises very serious constitutional problems. The U.S. Supreme Court, in fact, in 1984, specifically ruled on this question.

That is what Senator EDWARDS said on this floor a short time before we voted on the Wellstone amendment. Every person who has come to the floor, with the exception of Senator WELLSTONE, every one who opposes the DeWine amendment opposed the Wellstone amendment. There had to be a reason.

Again, what we are dealing with now is a changed bill, a changed playing field. It is a different ballgame. It is a different bill. I say to each one of you who took an oath to uphold the Constitution of the United States, it is a different bill that we now are going to be voting on tomorrow or the next day.

My amendment makes it a better bill. It makes it a constitutional bill.

Now, where are we? What does the new bill with the Wellstone amendment now say? It has the original provisions of Senator SNOWE and Senator JEFFORDS: 60 days out, corporations, unions no longer can engage in express advocacy. They no longer can run ads that are now allowed by law. That is a fundamental change. It is a gag on unions for the last 60 days during the period of time when it counts the most.

The bill now goes further. Not only does it cover unions for 60 days, not only does it cover corporations for 60 days, now it says virtually nobody can run an ad that mentions the candidate's name except the candidates. And no one can engage in discussion about candidates' voting records when they mention their names. I don't know how you discuss a candidate's voting record without mentioning their name, but you can't talk about a candidate's voting record within 60 days of an election unless you are the candidate or the other candidate, or unless you own a TV station, or unless you are the commentator for the nightly news. Everybody else, every other citizen is silenced for 60 days.

Do we really want to do that? Putting aside whether it is constitutional or not constitutional—I think it is blatantly unconstitutional, certifiably unconstitutional, but even if it wasn't—do we still want to do that in this country and say within 60 days before the election all these people can't talk anymore? I don't think we do.

Yes, speech is effective. My colleague from Maine in essence says it is too effective. She didn't use those words, but she said it is having an impact. Yes, it is having an impact. That is what political speech is all about. It is supposed to have an impact.

Everything seems to be reversed. At the crucial time when political speech matters most to the voters, those who hear it or see it, the bill as now written says: You can't do it. Sixty-one days out, you could run one of these ads, and you could talk about MIKE DEWINE's record. Fifty-nine days out from the election, you no longer can do it. And 3 days before the election, when everyone is paying attention, you can't run those ads. During the period of time when it is most effective, you can't run the ad.

Not only does it pick out the time when it is the most effective, but the bill also picks out the way candidates today communicate on TV and radio and says that is one method of communication you can't use. That is how we get our messages across. Whether we are candidates or whether we are opposing candidates or whether we are issue groups, whoever we are, we get it across through TV.

You can't compete and you cannot reach people in the State of Ohio unless you are on TV. That is a fact. Whether you are an issue group attacking MIKE DEWINE or whether you are an independent expenditure group, whoever you are, you can't reach people, or whether you are the candidate, you can't reach people unless you are on TV. So they pick the most effective way to do it and the most important time, and they have taken those off the table and said during that period of time, you can't be on TV. It is a direct, absolute attack on the first amendment.

What I have a hard time understanding is some of my colleagues and my friends who, on other days are the most vehement advocates for the first amendment, somehow don't think this violates the first amendment.

Mr. President, it is a direct attack on the first amendment.

I talked this afternoon about my own campaign, my last campaign. I want to get back to that. I emphasize, most of what my colleagues fear and have said I agree with. Each one of us lives in fear of a group putting an ad on TV that criticizes us. We don't become any less human when we get into politics or when we come to the Senate. No one likes criticism. And no one likes criticism that they think is unfair. Do you know what. That is part of what we do. That is part of what you have to accept in the United States of America if you run for office—maybe not in some other countries but here you do. That is what makes us different.

I told a story this afternoon about a group in Ohio—several groups that are mad at me over my proposal and support of a wildlife refuge in Ohio, the Darby Refuge. I happen to think it is a good idea; they don't. For some period of time, throughout the roads that I travel close to my home, and up through the different counties it takes me to go through where this refuge would be in Madison County, I see an awful lot of signs which say, ''Dump DeWine.'' I see signs that say, ''No Darby, No DeWine,'' and variations of that. I don't like it. But do you know what. That is part of the first amendment. If those people who put those signs up had decided to run TV ads, it seems to me they ought to have a right to do that. Again, I would not like it, but I think they have a right to do that. I think they have the right to pick the most effective way to get their message across, during the most crucial time, when people are really focused and paying attention, which is 60 days before the election, and to get their message out. If they want to put out a message on TV that basically says, ''Dump DeWine, '' or, ''Call Mike DeWine and tell him Darby is a bad idea,'' or variations of that, they ought to have a right to do that—as much as I would not like it.

It is a question of the first amendment. There has been a lot of talk, not just on the floor but among my colleagues for the last at least 3 days, almost nonstop, about the issue of severability. It is an issue we are going to get and vote on tomorrow. We would not have that discussion if it weren't so abundantly clear that the Wellstone provision, which is now part of Snowe-Jeffords, is unconstitutional. Members know it. They tell you that privately. Some have said it publicly. But virtually everyone gets that it is unconstitutional and the Court is going to throw it out.

This big debate tomorrow on severability and whether or not when one part of the bill goes down, another part

should go down, or whether we should fence off one part of the bill—that discussion, and a fairly close vote tomorrow, will come about because people know the Wellstone amendment is unconstitutional. If it weren't so, we would not be having that debate. That is going to be the thing that is unspoken tomorrow when we get to that debate.

I want to talk for a moment about my colleague from North Carolina, who is a very good lawyer. He and I had the opportunity, during the impeachment hearings, to work together, along with Senator LEAHY and others. I saw how good he is. My colleague came to the floor this evening and talked about the constitutionality of Snowe-Jeffords. I respect what he has to say. Again, I point out, though, that this is the same Member of the Senate—not much more than 24 hours ago—who came to the floor and basically said the Wellstone amendment was unconstitutional. I understand that his comments tonight were about Snowe-Jeffords; but the problem is that title II is no longer Snowe-Jeffords, it is Snowe-Jeffords-Wellstone, and it contains that provision which Senator EDWARDS said is unconstitutional, or certainly implied it. I read it in the CONGRESSIONAL RECORD.

My colleague from North Carolina went through the tests that have been laid down by the Supreme Court. There are tests as to whether or not you can basically infringe on the first amendment. The courts will look at any restriction on the first amendment from a strict scrutiny point of view. One of the tests is, is there a compelling State interest? In other words, the burden upon someone asserting that it is constitutional to prohibit speech. That person has to prove to a court's satisfaction that there is a compelling State interest to do that, to restrict that speech, because the presumption is you can't restrict speech. I talked this afternoon about that.

There were some areas where the courts have acknowledged that it is constitutional to restrict speech, but they are very narrow. They have held that it has to be a compelling State interest, and the burden of proof is on those who assert the constitutionality. It also has to be narrowly tailored. In other words, when the language is written to restrict speech, it has to be narrowly tailored.

I have failed to hear any discussion of any convincing nature of what the compelling State interest is. What is the compelling State interest that permits the U.S. Congress to say that within 60 days before an election we will stifle—shut off —free speech? What compelling State interest is there, and how is it narrowly drawn for Congress to say no speech within 60 days that mentions a candidate's name? How is that narrow? That is a sledgehammer that comes down on the first amendment and shatters it. It is certainly not narrowly tailored. And certainly the proponents of the constitutionality of this provision have not shown there is any compelling State interest.

Now, the Court talked, in Buckley, about the appearance of corruption. Proponents of this constitutionality provision have made the flat assumption and assertion that there is an appearance of corruption. Yet that is all they say. I don't know what the evidence is of that appearance of corruption. They made the flat out assertion that there is corruption, or there is the appearance of corruption, and that gives them authority to write this type of legislation. I think they have failed in their burden of proof. Again, I state what the law is. The law is that they have a burden of proof.

Again, in conclusion, my amendment will strike article II of the bill. Article II prohibits what I believe is constitutionally protected free speech on TV, within the last 60 days of an election, by labor unions, corporations and, most importantly, by all outside interest groups, by all groups of U.S. citizens who have come together to talk in the one way that is the most effective; that is, on television. It bans that. There is no compelling State interest to do it. It is clearly unconstitutional.

My friend and colleague from Maine also made another interesting comment. She said, ''I want to control my own campaign.'' I am sure the Presiding Officer thinks the same way. I can tell you I think the same way. I want to run my own campaign. I have had a lot of experience doing it. I have won some and lost some. I want to run my own campaign. She also said that this debate should be between the candidates themselves. Debate goes back and forth on TV.

I sort of agree with that, too. At least I understand what she means by that. You run against someone and you want to have that debate between the two of you. You start to get nervous when someone else gets involved in the debate. They may be trying to help you or your opponent. You do not know what they are doing. Sometimes they do not know what they are doing. I understand where she is coming from.

This is not an exclusive club we are talking about. There should be no walls built up in the political arena to keep people out. This is America. This is the United States. We do have a first amendment.

One of the basic beliefs of our founders was that public discussion of issues is essential to democracy. They did not have TV in those days, obviously. They did not have radio. The main method of communication was the printed press, posters being put up, or speeches directly given and directly heard, but the principle is the same. The more people you can involve in political discussion, the better it is.

There can be no walls built around the political arena where we say no one else can enter except the candidates. No one can participate except the candidates. No one can talk about issues in relationship to candidates, except the candidates.

That is just not what we do in the United States. That is not what this country is about. That is not how our political debates should take place. In essence, in a very revealing comment, my friend and my colleague from Maine certainly implied that. That is part of the problem with the way this bill is currently crafted.

This is the United States. I know many times when our campaigns drag on and on and they get pretty messy, and they get pretty rough, a lot of people say: Gee, why don't we do it the way this country does or that country, such and such a country. They do not mess around. They call an election in 6 weeks. They were strict when you could be on TV. They have their election, and it is over. Much as we might long for that sometimes when our campaigns drag on, or when Presidential campaigns start basically a couple months after one Presidential election is over and Senate races start several years in advance and House races seem to never stop, much as we long for that tranquility and the order, if we really thought about it, I do not think we would really want it.

As long as the Wellstone amendment stays in the bill, clearly this bill is going to be held to be unconstitutional.

What is different about us and other countries is our first amendment. It is our first amendment that is at issue. Many countries do not have the equivalent of our first amendment that protects political speech, that protects free speech. We do and we are much better for it. Our political discussion is much better for it and it is more informed.

We are different. I hope when Members of the Senate think about this tonight and prepare to vote tomorrow, they will remember the importance of the first amendment. They will vote for the DeWine amendment. They will vote to make this a better bill. They will vote to give this bill a much better chance of being held to be constitutional.

It is not just a question of the Constitution; it is also a question of public policy. Putting aside the constitutional issue, I do not think we want to be in a position where this Congress says, basically as the thought police in this country, political speech police, that within 60 days of the election we are going to dramatically restrict who can speak in the only way that is effective in many States, and that is to be on TV. I do not think we want to do that, Mr. President.

I thank my colleagues, and I thank the Chair.

CAMPAIGN TAX CREDIT

Mr. WARNER. Mr. President, as chairman of the Rules Committee during the 105th Congress, I presided over numerous hearings on campaign finance reform and I filed two comprehensive bills on this subject. And,